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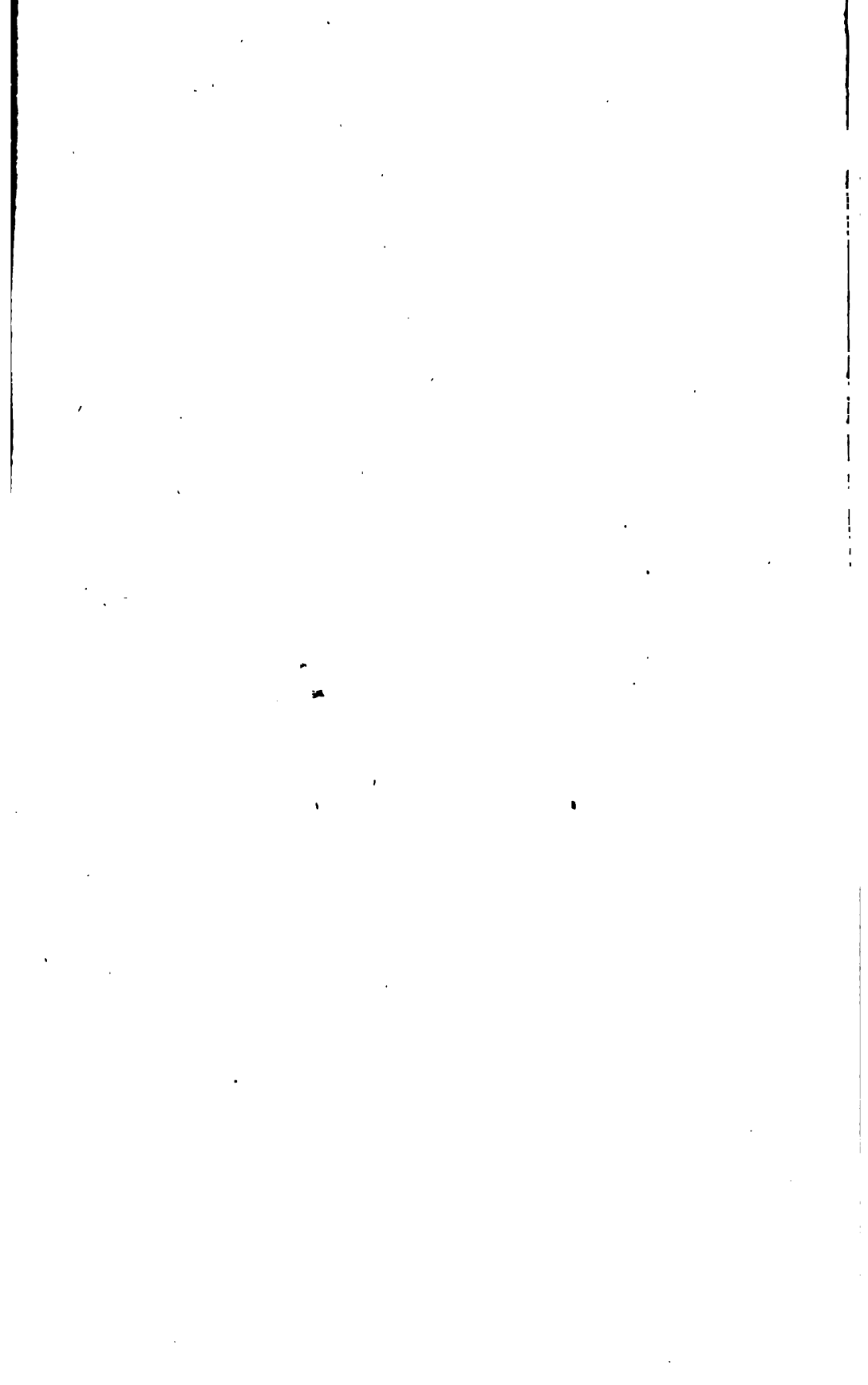


English Sports - Reminiscences

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# The Legal Observer.

SATURDAY, MAY 2, 1846.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

## STATE OF THE LAW BILLS IN PARLIAMENT.

At this period of the session, after the Easter recess, when the measures intended to pass into laws are usually urged forward;—moreover, on the commencement of a new volume,—we may appropriately advert to the bills for the alteration of the law now under the consideration of parliament. In order that their scope may be more distinctly perceived, we shall class them under the heads of—1st, Conveyancing. 2nd, Equity. 3rd, Common Law. 4th, Bankruptcy and Insolvency. 5th, The Highways and the Poor.

1. The bills, which in an especial degree are likely to attract the attention of both branches of the profession, are the short-form conveyances, to which we briefly adverted last week. There has been an apprehension that these bills were designed or calculated to diminish the just emoluments of practitioners. We are assured that this notion, though extensively entertained, is not well founded; and, at all events, it is said, that means will be taken to award such due remuneration as will secure the services of the ablest and most respectable men. And there can be no doubt that the best interests of the public are involved in fully effecting this object.

Our law reformers, howbeit, fond of experimental legislation, and theoretical improvement, constantly asseverate that they have no intention to degrade the station of lawyers, or diminish the esteem in which they are collectively or individually held. Indeed, to lower the rank of any branch of the profession, would be not only to injure the whole, but to impair the effective administration of justice. If the solicitor be

degraded, the bar will soon suffer by its communication with an inferior order of persons,—deficient alike in attainments, integrity, and honourable feeling. Petty litigation, unseemly disputes, low tricks, and sharp practice would prevail. The best men at the bar would be disgusted with their occupation,—an inferior class would take their place, and ultimately the bench would fall amidst the general deterioration of the body from which its members are chosen.

Still doubting the necessity, or the expediency of these act-of-parliament, or common forms, we are inclined to believe, that if the legislature should be disposed to pass them, they will be accompanied with such provisions as will enable the judges to do justice to the profession by a scale of remuneration suited to the rank and condition of a respectable class of practitioners.

Next to these threatened abridgments of the "fair proportions" of our standard precedents in the law of real property, comes the bill for a *general registry of deeds*. We have already on several recent occasions, noticed some of the principal objections to this project, and shall have others to adduce, whensoever the author of the bill shall think it fitting to proceed with it. In the mean time, we see that preparations have been made in various quarters to meet the proposal with a stout opposition. This measure will not be permitted, (like the optional bills of last session,) to pass in silence. Here also, the interests of the clients, particularly for a generation to come, are quite as much involved as the lawyers, in upholding the old system: We anticipate, therefore, that Lord Campbell will be disposed again to defer his plan. Still, we would advise those whom it may concern, to watch any movement that may

be made towards the second reading of the bill.

Connected with these real property measures may be noticed the select committee of the House of Lords on the burthens imposed on real property. We hope the labours of the committee will not close without a strong recommendation to abolish the lease for a year stamp, and to revise the scale of *ad valorem* duties. Whilst a reduction would afford much relief, especially in small purchases and mortgages, we believe that ultimately the revenue would not be impaired, for the number of transactions would be increased.

2. The bill which will peculiarly affect the proceedings and practice of the Courts of Equity, is the Charitable Trusts Bill. We have already stated the objections, on public grounds, to the extension of the powers of the bill beyond the superintendence and regulation of small charities. There are also professional objections to the measure. It is clear, we think, that the legal business of these trusts is better performed under the present system than it can or will be under the new. The trustees now act according to the advice of some respectable solicitor of their own appointment, and in many cases they have a standing counsel, either formally nominated or usually consulted. These advisers thoroughly understand the nature of the trust, and generally it is well executed. In the comparatively rare instances in which there is an abuse, other solicitors in the neighbourhood are ready enough to aid in setting the matter right; and it is admitted that the Court of Chancery is the best adapted to obtain redress, except that its proceedings are expensive. Now let us see how the expenses are likely to be reduced by the proposed alteration.

We may fairly presume that large salaries (to be raised out of the trust funds) will be paid to the commissioners, the assistant commissioners, their secretaries, clerks, messengers, &c., &c. The natural working of the principle of patronage will raise these emoluments as high as possible, and no inconsiderable outlay of travelling expenses must be added. These continual imports on the charity funds, we have no doubt will far exceed the amount now paid occasionally to counsel and solicitors. There will in fact be a mere change of officers without any resulting benefit to the charities. The business will be conducted by strangers in the localities of the trusts. The investigation in the first instance, and

the management afterwards, will be conducted by agents appointed from political influence and not by the parties most interested in the due administration of the trust. Instead of an occasional chancery suit, there will be a continual inquest. The officers engaged will require no legal education or qualification. If indeed the bill should pass in its present shape the services of the present professional men, now engaged in this large and respectable class, of business, will be mainly dispensed with, and a host of new officials will be appointed in their place, in whose choice the public will have no voice. In fact a gigantic piece of government machinery will be established in lieu of the combination of individual charity, and the consequences will inevitably be the present injury and the final annihilation of these excellent institutions.

Let us hope that the promoters of the measure will perceive the danger, if not the mischief, of their project, and either withdraw the bill in its present shape, or confine it to the smaller class of charities.

3. The bills affecting the practice of the courts of common law are in some respects peculiarly useful. Thus the bills of Lord Campbell for abolishing *deodands* and substituting a right of action for compensation to the families of persons killed by accidents arising from negligence or default, are clearly just and expedient towards the public; and in carrying the remedy into effect, the aid of the profession must, of course, be required. Some of the profits of railway carelessness and mismanagement will therefore pass into the pockets of the injured survivors and their legal advisers.

So far so good; but on the other hand, we find that new bills continue to make their appearance for establishing petty local courts and diminishing the business of Westminster Hall. Notwithstanding the sweeping reform of the last session, by which the jurisdiction of all local courts may be enlarged to 20*l.*, and their districts extended, several bills have been brought in this session, for establishing new or enlarging old local courts. Thus it is proposed to extend the jurisdiction of the hundred court of Salford, which comprehends a large part of Lancashire, to the sum of 50*l.*, and there is a similar project for Somersetshire. Now surely this is beyond all reason, and at all events these plans should be suspended until the government has brought in its promised bill for



carrying into effect the comprehensive scheme, the principle of which was enacted by the 8 & 9 Vict. c. 127, s. 9.

4. To the Bankruptcy and Insolvency Bill, we see no reason to object on professional grounds. It properly proposes to confer larger powers over the property of debtors. Perhaps some of its provisions may occasionally bear with severity on innocent traders; but it must be confessed that for many years there has been a morbid taste for the relief of debtors of all classes, not merely from misfortune, but through all the shades of culpability and fraud, scarcely short of indictable offences. The interests of *creditors* are now justly considered, and with due precautions against needless harshness, we trust the measure will be successful.

5. The next two bills to which we would direct the attention of our readers, seem calculated, (though we would fain believe they are not so intended,) well nigh like the Charitable Trusts Bill—to deprive a large number of our brethren of their usual and honourable avocations, and to appoint in their stead unprofessional, and we venture to say far less competent, agents. On grounds of public policy, we are precluded from complaining that the effect of the Poor Removal Bill must annihilate a large class of litigation, for if the public interests should be really promoted by the change, the lawyers must submit to the necessity of the case; but we have a right loudly to remonstrate against authorizing the employment of persons not legally qualified to transact the business before magistrates and the quarter sessions, which properly belongs to the regular practitioner.

Now the 15th section of the Poor Removal Bill provides, that the board of guardians of parish unions under the authority of the poor law commissioners, may appoint a paid officer to attend to all matters relating to the settlement and removal of the poor, and the commissioners may make regulations as to all *proceedings* relating thereto. The 6 & 7 Victoria, c. 73, prevented all unqualified persons from acting as attorneys before magistrates, and the 7 & 8 Victoria, c. 101, s. 68, limited such practice to the petty sessions, leaving the prohibition untouched as to the quarter sessions. Now here, if we mistake not the intention of the clause, there will be no restriction whatever:—any body may practise in parish affairs, anywhere and

to any extent. This should be provided against.\*

Again, the Highway Bill, of which we gave an abstract in our last volume, p. 547, will have the effect, we apprehend, of removing several hundred solicitors from the office of clerks to turnpike trusts, and giving their appointments to other persons. The business-like habits and education of professional men render them peculiarly well qualified to fill these offices, and it may be that many will be selected, but then they must retire from practice, and devote themselves solely to their official duties.

All these measures seem to forebode a serious change in the station and emoluments of professional men. Both branches of the profession will be rendered less independent. Too many, instead of aiming at the highest rank in their profession, will look to the favour of influential persons for these “snug appointments.”

## POINTS IN COMMON LAW PRACTICE.

### FORM OF APPLICATION TO SET ASIDE PROCEEDINGS FOR IRREGULARITY.

THE form of motion indorsed on counsels' brief is often deserving of more consideration than it receives from the practitioner. It is not enough to ensure the success of an application, that the materials furnished by the affidavit, on which a rule is moved are sufficient, if the form of the rule has been misconceived. An instance of miscarriage, arising from a mistake in the form of a motion, occurred in a case in the Court of Common Pleas, lately reported.\* That which the court pronounced to be an error in this case, was one into which the most astute and intelligent person might readily have fallen, but by pointing attention to it, we hope to prevent others from falling into errors of a similar character, the more especially as the decision of the court in this case involves something that may be regarded as a rule with respect to the form of applications of this nature.

In *Brooks v. Roberts*, the defendant, according to his affidavit, had never been served with any writ of summons, and was first informed that the plaintiff had commenced an action against him, by the service of a notice of declaration. A rule was therefore obtained, calling upon the

\* See this bill and observations on it in the last vol. pp. 111, 134, 493, 534.

\* *Brooks v. Roberts*, 1 Com. Ben. R. 536.



plaintiff "to show cause, why the declaration and subsequent proceedings should not be set aside," &c. Upon showing cause against this rule it appeared, that an appearance had been duly entered for the defendant *sec. stat.*, and he was met by the objection that an appearance having been apparently regularly entered, the declaration was properly filed, and the motion misconceived. It was insisted, on the other side, that as an appearance according to the statute could only be entered upon personal service of the writ of summons, and as there had been no such service in this case, the defendant was entitled to treat the appearance as a nullity.

*Tindal*, C. J. (with the concurrence of the other judges) was of opinion that the application should have been to set aside the appearance, and not the declaration, for whilst the appearance remained in the books of the court apparently regular, there was no irregularity in the declaration. This view was fortified by two cases referred to by the learned chief justice. In the earliest of those cases,<sup>b</sup> where the writ was irregular, and the defendant moved to set aside the service, the Court of Exchequer discharged the rule, *Bayley*, B. observing, "that if a true copy of the writ had not been served, or if it had not been properly served, the court would have set aside the service for irregularity; but here the objection was not to the service but to the writ." Where the objection was to the service some defect ought to be shown in the service, it was not enough to show that the writ was irregular. In the subsequent case of *Edwards v. Danks*<sup>c</sup> where the mistake was in suing out the writ, and the rule was to set aside the service, the Court of Exchequer also discharged the rule, on the ground, that the motion should have been to set aside the writ itself, and not the service. So in *Brooks v. Roberts* the motion supposed an irregularity in the declaration for which there was no warrant—the fault was higher up—in the appearance, and to that the motion should have addressed itself.

The rule, we apprehend, deducible from these cases is, that where an application is made to set aside proceedings for irregularity, the motion must be pointed at the earliest proceeding affected by the irregularity, and not merely to the first pro-

ceeding by which the knowledge of the irregularity is brought to the notice of the objecting party.

#### NEW TRIAL ON THE GROUND OF THE INSUFFICIENCY OF DAMAGES.

It is every day's practice, as our readers are aware, in the courts of law, to grant rules for new trials, on the ground that the damages are excessive, or greatly disproportioned to the injury complained of. In actions of *tort*, however, the cases are extremely rare in which the courts will grant a new trial at the instance of the plaintiff, on the ground that the damages awarded by the jury are insufficient; because it is the peculiar province of the jury in those cases, to say to what amount of damages the plaintiff is entitled.

In the case of *Hayward v. Newton*<sup>d</sup> the court said, that a new trial was never to be granted on the ground that the damages were smaller than the court might think reasonable. In *Randall v. Hayward*,<sup>e</sup> however, which was an action of slander, where the slander was repeated in a way which indicated malice on the part of the defendant, who refused to make any apology, and the jury found a verdict for the plaintiff with only 20s. damages, and the judge, in the then state of the law, had no power to certify, so that the plaintiff would obtain no costs, *Tindal*, C. J. said:—"I think a more complete measure of justice would have been attained if the jury had given higher damages, but the court never grants a new trial because the damages are low, unless there has been some mistake on a point of law on the part of the judge who presided, or in the calculation of figures by the jury." In a very late case<sup>f</sup> an additional qualification was added to the rule, that the court would not grant a new trial by reason of the smallness of damages. In that case the action was brought against a surgeon for negligence, whereby the plaintiff lost his leg, and the plaintiff had a verdict, with one farthing damages. On a motion for a new trial on the ground of the inadequacy of the damages, *Tindal*, C. J. pronouncing the judgment of the Court of Common Pleas, after referring to the cases above cited, added, that "at any rate a new trial ought not to be granted on such a ground, unless the judge

<sup>b</sup> *Hisker v. Jarman*, 1 Cr. & M. 408; 3 Tyr. 381.

<sup>c</sup> 4 Dowl. P. C. 357.

<sup>d</sup> 2 Stra. 940. <sup>e</sup> 5 Bing. N. C. 424; 7 Sco. 407.

<sup>f</sup> *Gibbs v. Tunaley*, 1 Com. Ben. R. 640.

who tried the cause was dissatisfied with the smallness of the damages," and as that was not the case in this instance the rule was refused.

## NOTICES OF NEW BOOKS.

*A Treatise on the Law of Contracts and Parties to Actions Ex contractu.* By C. G. ADDISON, Esq., Barrister at Law. London: Richards. 1845. Pp. 366.

ACCORDING to our promise, we proceed to notice this, as we shall other works, which have remained in arrear for some time, and are entitled to receive in these pages a concise review of their scope and objects.

Mr. Addison states that his materials were originally collected together and arranged for private reference and instruction, and he has published them in the hope that they may be found useful, at all events to those to whom the science of the law is not familiar, or who have not a constant and ready access to the vast and voluminous reports of the proceedings of our courts of justice. He properly observes, that it would be idle to dilate upon the vast importance of the law of contracts, upon its "great and universal concernment," and the advantage of an acquaintance with its general rules and principles, as well to every man of business, as to the professed lawyer. A cursory glance at the contents of the treatise, particularly of the third and fourth chapters, will make it abundantly evident that there are few mercantile transactions that can be entered into and conducted with safety without some knowledge of the subjects therein contained. The rules and principles of law prescribing and regulating the parties in actions *ex contractu* are more especially useful to the practical lawyer and the student: they serve also to illustrate and explain the law of contracts generally, and to define and ascertain the rights and liabilities of parties under the varying events and circumstances of daily life.

The learned author admits, that there are many able works devoted either wholly or partially to the development of the subject treated of in his volume. But he submits that the subject, though not intact, is far from being exhausted; and he hopes that the desire to communicate information, more especially, to those who are not learned in the law, or who are about to cross the threshold of legal science; and

the labour and pains that have been taken to render the work accurate will ensure it a favourable consideration, and in some measure excuse the boldness of the undertaking.

The treatise is divided into fourteen chapters, of which the following are the purport and effect:—

1. On deeds, their requisites and attributes.
2. On simple contracts, and the consideration necessary to support them.
3. Of the contract of sale, and its requisites, in respect of authentication by writing.
4. Of the authentication and establishment in law of contracts generally.
5. Of the legal force and effect, and of the interpretation of deeds and simple contracts.
6. Of conditions precedent to the right of action *ex contractu*.
7. Of covenants and simple contracts and promises created by implication of law.
8. Of the plaintiffs in actions *ex contractu*.
9. Of the right of action *ex contractu* in the case of principal and agent.
10. Of joint and separate rights of action *ex contractu*.
11. Of the plaintiffs in actions *ex contractu* when there is a change of interest by assignment and by novation and substitution.
12. Of the right of action *ex contractu* when there has been a change of interest by bankruptcy or insolvency.
13. Of the plaintiffs in actions *ex contractu* when there has been a change of interest by marriage.
14. Of the plaintiffs in actions *ex contractu* where there has been a change of interest by death.

This arrangement of the subjects of the treatise appears to be judicious, and we shall extract, by way of specimen, the following passages, showing the law regarding the *sealing* of deeds, their *delivery*, (including the doctrine of *escrow*), and *attestation*.

"*Sealing of DEEDS.*—The use of seals for the authentication of contracts and writings, appears to have been almost unknown in England, prior to the conquest. Under the Anglo-Saxon government, contracts and written declarations and memorials were solemnly ratified with the sign of the cross, in the presence of numerous witnesses, and derived all their force and efficacy from their publicity.<sup>a</sup> One of the most ancient sealed documents of any authenticity in England, is the charter of Edward the Confessor to Westminster Abbey.<sup>b</sup> Edward the Confessor was brought up in Normandy, and the custom of using seals is said to have

<sup>a</sup> *Madox*, dissert. xxvi. form. Angl. p. 115, 131, 136, 176. *Spelman's Gloss.* p. 228. Monast. Angl. vol. 5, p. 269, col. 1.

<sup>b</sup> Co. Litt. 7 a. speaks of a *sealed* charter as early as A. D. 256. Vin. Abr. *Faits*, 20.

been introduced from that country into England, and to have become general shortly after the conquest. The practice appears to have been originally derived from the far East, where it has prevailed from the most remote antiquity down to the present time. In the Bible, mention is frequently made of letters sealed with the king's seal;<sup>c</sup> and we are told that "the writing which is written in the king's name, and sealed with the king's seal, can no man reverse."<sup>d</sup> From the book of Jeremiah we find, that writings under seal constituted part of the formalities and requisites of a Jewish purchase of land. "And I bought the field of Hanameel, and weighed him the money. . . . And I subscribed the evidence, and sealed it, and took witnesses." And in another part of the prophecies we are told, that "men shall buy fields for money, and subscribe evidences, and seal them, and take witnesses."<sup>e</sup>

"Every sheykh and governor of a village throughout the East, has at this day his own private seal and signet, with which he seals and authenticates his writings and decrees; and it is probable that the common practice of using seals for the authentication of documents, both of a public and a private nature, which became prevalent in different parts of the continent about the time of the crusades, was originally introduced by the pilgrims from Jerusalem. The practice was brought into general use in England, as before mentioned, by the Normans after the conquest, who caused the ancient Saxon contracts and writings to be sealed with waxen seals in the presence of witnesses, and gave them the names of charters or DEEDS.

"The Norman barons and knights had each their own peculiar seals, whereon was engraved the device or cognizance, or coat of arms of the bearer;<sup>f</sup> and we are told that a seal, as well as a military grade, was granted to persons of noble birth when they came of age.

"If a man accidentally lost his seal, it was his duty to give public notice of the fact, to put people on their guard, and prevent them from being deceived and prejudiced by the acts of parties who might have got possession of the seal, and made use of it without the authority of the owner. 'If a man,' says Glanville, 'acknowledges the seal attached to a deed to be his own seal, he is bound to warrant the terms of the deed, and in all respects to observe the compact expressed in the deed as contained in it without question; and it is to impute it to his own indiscretion if he incur loss by negligently preserving his own seal.'<sup>g</sup>

"When the increase of trade and commerce had diffused wealth amongst the inferior classes of society, the use of seals was no longer confined to the great lords and the landed gentry; the rich burghers and merchants of the towns acquired land, and made grants thereof under

seal, and adopted any kind of mark, stamp, or device, that suited their pleasure or convenience as their seal for the purpose of executing deeds. It was held that a deed was sufficiently sealed if a man publicly acknowledged, in the presence of witnesses, that the seal attached to the deed was his seal, although the seal might never have belonged to him, and might have been fixed to the parchment prior to its engrossment; and this gradually gave rise to the present loose, and senseless, and unsatisfactory mode of authentication by seal. The safeguards are removed; but the contract retains all its original force and vitality.<sup>h</sup>

"It now rarely happens, that the party executing a deed actually seals it with his own hands, or with his own seal. The seal, which is usually some old wafer stamp, or a button, is fixed or compressed on the deed by the person professionally employed; the executing party merely acknowledging, in the presence of witnesses, the seal to be his seal. 'If a stranger seal a deed by allowance or commandment precedent, or agreement subsequent of him that is to seal it, before the delivery of it, it is as well as if the party to the deed did seal it himself, and therefore if another man seal a deed of mine, and take it up after it is sealed, and do deliver it as my deed, this is said to be a good agreement to and allowance of the sealing, and so a good deed. And if the party seal a deed with a seal that is not his own seal, or with a stick, (?) or any such like thing which doth make it a *print*, it is good; and although it be a corporation that doth make the deed, yet they may seal with any seal besides their common seal.'<sup>i</sup>

"It has been held also that one and the same seal may be the seal of half a dozen persons at the same time. Thus, where one of two partners, in the presence of the other, and by his authority, sealed a deed for them both, but there was but one seal, and the seal did not appear to have been put twice upon the wax, it was held that the execution by the one partner operated as the execution of both, upon the authority of Lord Lovelace's case, where it was said, 'that if one of the officers of the forest put one seal to the rolls by assent of all the verders and other officers, it is as good as if every one had put his several seal; as in case divers men enter into an obligation, and they all consent, and set but one seal to it; it is a good obligation of them all.'<sup>j</sup> But they must all be actually present consenting to the act; otherwise the execution is not good.<sup>k</sup> The seal, or the acknowledgment of the seal, must be made after the deed has been written, and before its delivery; for if a blank piece of paper or parchment be sealed and delivered, and afterwards written upon, it is no deed.<sup>l</sup> It has accordingly been held, that a

<sup>a</sup> 1 Kings, c. 21; see also Daniel, c. 6.

<sup>d</sup> Esther, c. 8. • Jeremiah, c. 32.

<sup>f</sup> Dugd. Antiq. Warwickshire, p. 972. Du Fresnoie, Gloss. tom. 3, p. 654.

<sup>g</sup> Glanville by Beames, p. 262, 268.

<sup>h</sup> 11 Co. 27 b.; Co. Litt. 171 b.; Shep. Touch. 1, ch. 4.

<sup>i</sup> Sheppard's Touchstone, ch. 4.

<sup>j</sup> Ball v. Duasterville, 4 T. R. 313; The King v. Longnor, 4 B. & Ad. 647.

<sup>k</sup> Harrison v. Sykes, 7 T. R. 287.

<sup>l</sup> Perkins, § 118, Com. Dig. Fait. A. 1.

bail bond which had been executed before the condition was filled up, was absolutely null and void," and that a deed of conveyance or transfer of shares executed by the proprietor of such shares, with the name of the purchaser in blank, and handed over by him to the plaintiff, by whom, on the sale of such shares to the defendant, the defendant's name was inserted as such purchaser, was void.\*

"**DELIVERY.**—The delivery of a deed may be made either by the acts of the parties or by express words, it being sufficient, if the parties testify in any clear and unequivocal manner, their intention of delivering the instrument as their deed. 'It may be made by the party himself that doth make the deed, or by any other, by his appointment, or authority, precedent, or assent, or agreement subsequent;'" and it has been held that circumstances alone may be equivalent to a delivery where no actual delivery can be proved, for where the party to a deed was shown to have acted under the instrument, and to have done a variety of things confirmatory of the contract, Lord Mansfield held that the acts so done amounted to an acknowledgment of the delivery of the deed.<sup>4</sup> But the mere manual delivery or handing over of a sealed contract, unaccompanied by evidence of the intention of the party to deliver it as his deed will not be sufficient to impart to the contract the character and effect of a deed;<sup>5</sup> and if it should appear that the contract was delivered conditionally, and not with a view of its immediately taking effect as a deed, it is said to be *delivered as an escrow*, and an action cannot be maintained upon it until the condition has been performed.

"**Delivery of a deed as an escrow.**—'It is now settled,' though the law was otherwise in ancient times, as appears by Sheppard's Touchstone, that in order to constitute the delivery of a deed as an escrow, it is not necessary that it should be done by express words, but you are to look at all the facts attending the execution, —to all that took place at the time, and to the result of the transaction; and therefore though it is in form an absolute delivery, if it can reasonably be inferred that it was delivered not to take effect as a deed till a certain condition was performed, it will nevertheless operate as an escrow," and will not consequently have the character and effect of a deed until the event has happened, or the precedent condition has been performed.<sup>6</sup>

"**Attestation by witnesses.**—The most useful formality attending the making of a deed, now that the practice of sealing has become a mere empty form, is the attendance of witnesses to attest the execution of the contract. Their presence is not essential to the validity of the deed, but is generally requisite to establish the fact of the sealing, or of the acknowledgement thereof, and of the due performance of those ceremonies and circumstances which are required by law to constitute a valid execution of the instrument;" and here it may be observed, as it has been made the subject of express judicial determination, that the mere placing of a seal to a written contract will not make the contract a deed. Thus, where an action of assumpsit had been brought upon certain articles of agreement, which, when produced, were not only signed by the parties, but had a seal opposite to each signature, it was contended that the plaintiffs ought to be nonsuited, as they should have declared upon a deed, but it appeared that the seals had been affixed to the document through ignorance and by mistake; and it was accordingly held, that the placing of a seal opposite to the name of the party, though evidence of a deed and one of the formalities belonging to it, was not to be taken as conclusive. If the parties did not mean to contract by deed, and had made use of the seal in ignorance of its legal effect, the contract would have the force and effect only of a common agreement.<sup>7</sup> It would be advisable, indeed, in all cases to require strict proof that the seal attached to a written contract was affixed thereto and acknowledged by the party, and that the contract was delivered with the intention of giving to the instrument the character and effect of a deed, inasmuch as the contract, though bad as a deed, might yet, under certain circumstances, be good as a common agreement or simple contract.<sup>8</sup>

Some of the notes and authorities bearing on these doctrines and positions, our limited space has not permitted us to extract. The work is, we think, calculated to be especially useful to the student. It comprises a concise but comprehensive statement of the law, and brings down the substance and effect of the decisions to the present time.

\* *Powell v. Duff*, 3 Campb. 191.

<sup>4</sup> *Hibbithwaite v. M. Morine*, 6 M. & W. 200.

<sup>5</sup> *Shep. Touch.* 1, ch. 4, p. 57.

<sup>6</sup> *Goodright v. Strapham*, Cowp. 201; Co. Litt. 35; 2 Rolle Abr. 26; Vin. Abr. Faits. (K.).

<sup>7</sup> *Stanton v. Chamberlin*, Ow. 95; Cro. E. 122 s. c.

<sup>8</sup> *Parke, B., Bowker v. Burdekin*, 11 M. & W. 147.

<sup>9</sup> *Johnson v. Baker*, 4 B. & Ald. 440; *Murray v. Earl of Stair*, 2 B. & C. 92; *Perk.*, sect. 137.

<sup>1</sup> *The King v. Longnor*, 4 B. & Ald. 647, 1 M. & W. 576 s. c.; *Burling v. Paterson*, 9 C. & P. 570; *Garrett v. Lister*, Law. 26.

<sup>2</sup> *Clement v. Gunhouse*, 5 Esp. 82, 83; *Goodright v. Gregory*, Loft. 339; *Davidson v. Cooper*, 11 M. & W. 778.

<sup>3</sup> *The King v. Ridgewell*, 9 D. & W. 678, 6 B. & C. 685, s. c.

## LAW OF ATTORNEYS AND SOLICITORS.

## INSERTING TITLE OF CAUSE AND COURT IN BILLS OF COSTS.

A CASE decided in the Court of Common Pleas has been lately reported,<sup>a</sup> which, besides affording a useful lesson in framing bills of costs, is remarkable for the circumstance, that whilst his learned brethren on the bench were unanimously of opinion that the ruling of Mr. Justice *Maule*, on circuit, was correct, and ought to be upheld, the learned judge himself was of opinion, on more mature reflection, that the direction he had given the jury on the trial, and on which they acted, was erroneous.

The action was brought on a bill for 68*l.* 8*s.* 3*d.*, the whole of which had been incurred in a suit of *Falkner v. Matthews*, before the Master of the Rolls. The defendant, amongst other things, pleaded, that no bill of fees, &c., had been delivered pursuant to the statute. It appeared in evidence, that a retainer headed in the court and cause had been delivered to the plaintiff; but it was objected that the bill delivered by the plaintiff was not headed in the court or cause. Upon the production of the bill, it appeared that, although not distinctly headed in any court, the first item contained a reference to a cause in Chancery in these terms:—"Dec. 22. Attending on you, conferring and advising respecting your suit in Chancery, &c., as to the order of dismissal, &c.;" and in a subsequent item the name of the cause was thus stated:—"Falkner v. Matthews. Paid for minutes of decree, 5*s.*" The bill contained various other items, from which it was tolerably clear to any person conversant with such matters, that a decree had been pronounced by the Master of the Rolls, in a suit depending before him, and a petition of appeal thereupon to the Lord Chancellor. Under the direction of *Maule*, J., a verdict was taken for the plaintiff for the full amount of his bill, reserving leave to enter a verdict for the defendant, if the Court of Common Pleas should be of opinion that the bill delivered was not a sufficient compliance with the statute. A rule having been obtained accordingly, the principal question discussed was, whether under the statute 2 Geo. 2, c. 23, which

required the delivery of a bill a month before action brought, a statement of the court and cause was necessary in such bill. It was conceded in the argument, and expressly stated in the judgment, that the object of the provision was to enable the party charged to apply to the court in which the greatest part of the business had been done to have the bill taxed, and therefore, that the bill should contain a sufficient intimation to the party charged as to the court in which the business was done, to enable him to determine to what court he ought to apply. The point on which the difference of opinion arose between the judges was, whether it did sufficiently appear in the bill delivered by the plaintiff, in what court the chief part of the business had been transacted. The cases chiefly relied on were *Lester v. Lazarus*, in the Court of Exchequer,<sup>b</sup> where the same point was mooted but not decided, *Parke*, B., observing, that "under the statute, the statement of the court may be a necessary part of the bill;" and *Alderson*, B., saying he did not see the necessity for stating the court in which the business was done, as it was not expressly required by the statute, and could only be considered necessary by implication from the provision as to the court to which application should be made for the taxation of the bill. In a more recent case of *Lewis v. Primrose*,<sup>c</sup> however, where no mention of either the court or the cause appeared in the bill delivered, the Court of Queen's Bench distinctly held, that it was essential to the delivery of a valid bill under the statute, that these particulars should appear on the face of it.

*Tindal*, C. J., and *Cresswell* and *Erie*, Justices, agreed with the decision of the Court of Queen's Bench in *Lewis v. Primrose*, that although the express terms of the statute 2 Geo. 2 did not require, yet it followed from the manifest object of the statute, that the party charged should be enabled to ascertain from the bill itself in what court the greater part of the business was done. They thought, however, it appeared by reasonable intendment on the face of the bill delivered by the plaintiff, that the proceedings were in the nature of a suit in Chancery, and what the name of that suit was. The whole of the items contained in the bill were referable only to a suit in Chancery, and any person of ordinary knowledge and understanding would collect from a perusal of the bill that it related to a suit in Chancery between *Falkner* and *Matthews*. They were therefore

<sup>a</sup> *Martindale v. Falkner and another*, 15 Law Jour. 91 C. P.

<sup>b</sup> 2 Crompt. M. & Ros. 265.

<sup>c</sup> 13 Law Jour. 269, Q. B.

of opinion, that the direction given by their learned brother at the trial was right, and that the plaintiff was entitled to retain his verdict.

*Maule, J.*, admitted that the point of view in which he now saw the case, did not go to the justice of it, inasmuch as the business for which the action was brought had been undoubtedly done by the plaintiff. Still the court should put a right construction on the law without looking to the convenience in particular cases, as its decisions on matters of this kind were afterwards looked to as precedents. In his opinion, the language of the statute 2 Geo. 2, showed, that what it required to be done was to be done for the information of simple people, and not merely of persons learned in the law. The plain object of the act, which was to give the party charged the opportunity of having the bill taxed in the court in which the business was transacted would be defeated, if the bill was not required to state the court in which the business was done. He considered the case of *Lewis v. Primrose* as substantially in point, and it would be overruling that decision to say the court need not be named. It was suggested that the bill did show the business was done in the Court of Chancery. Perhaps it did to persons familiar with such matters, though even to such persons not with certainty. But was this a sufficient compliance with the statute? It was a mistake to say there was a presumption that every man knew the law. In answer to an observation to that effect from *Mr. Dunning*, Lord *Mansfield* observed:—"It would be very hard on the profession of the law if every one knew it." The rule merely was, that ignorance of the law did not exempt men from the consequences of their acts, but the law noticed that there were doubtful points, and it was contrary to common sense to suppose every one was acquainted with the practice of the courts. The simple question to his mind was, whether the bill delivered in this case afforded information, from which a person practically ignorant of such matters would necessarily infer, that it was for business done in the Court of Chancery? He thought it would be too much to suppose that any person not a lawyer could know that many of the items contained in the bill were for Chancery business, and unless the bill showed in what court the greater part of the business was done, the statute was not complied with. He now thought, therefore, that his direction to the jury was wrong, but as the rest of the court differed from him he was not sorry to have given that direction.

After this expression of opinion on the part of the learned judges of two out of the three courts of common law, it is clear that the only safe course for practitioners will be, to head the specific items in their bills for business done in any court or cause, with the name of the court and cause.

In *Martindale v. Falkner*, the question was also raised, whether the plaintiff's bill, which commenced in 1835, was not barred by the Statute of Limitations, the action not having been commenced until May, 1844. In answer to this objection, the plaintiff's counsel cited *Harris v. Osborn*,<sup>2</sup> and *Nicholls v. Wilson*,<sup>3</sup> in which it was held, that when an attorney accepts a retainer to prosecute or defend a cause, he enters into a special contract to carry it on to its termination. In the present case, although the suit commenced in 1835, the last claim in the plaintiff's bill was in Easter Term, 1843, and according to the authority of the cases last cited, it is only from the termination of a suit in which a party acts as attorney that the statute runs in respect of his bill. On the other side, the principle was admitted, but it was argued that there was no sufficient evidence that the suit was a continuing transaction. The Chief Justice, however, in his judgment disposed of the point by observing, that it had been answered by the cases cited in the argument. On both points, therefore, the judgment was for the plaintiff.

## EDUCATIONAL CHARITIES.

### GRAMMAR SCHOOLS.

OUR ancestors did not neglect the education of the people, for we find that even before the conquest, it was the discipline of the church, "that every parish priest should have a free school in his house."<sup>4</sup>

By the third General Lateran Council, holden in the year 1179, all cathedral churches were required to take order for the providing of "competent salaries to masters so as to enable them to teach the clergy and poor scholars gratis." As it was evident that education could not be gratuitous, unless the teachers were rendered otherwise independent, the council wisely commenced at the right end by requiring bishops to secure for teachers a sufficient provision, so as to enable the latter to ply their vocation without charge. The council, therefore, was not contented with simply saying, "Be ye instructed," but took the most effectual means of making at once practicable and compulsory the great end in view.

By the fourth General Lateran Council, holden in the year 1215, the decree of the council of 1179 was recited and confirmed, and was extended to all other churches competent to sustain the expense of a lecturer on theology, as well as a master to teach gratuitously "the

<sup>2</sup> 2 Cr. & M. 629. <sup>3</sup> 11 Mees. & W. 106.

<sup>4</sup> Anc. Laws of England, Record Com. Report, vol. ii. p. 415.

<sup>4</sup> In *Jones v. Randall*, Cowp. 40.

clergy of such churches and others in the art or faculty of grammar."

The same system is continued by the Council of Trent, holden in the year 1545, whereby it was required, that "in all churches not able to maintain a lecturer on theology, there should at least be a master to teach grammar to the clergy and other poor scholars gratis."

By "grammar" would appear to have been meant in general the Latin tongue, which was the language of the sacred writings and of the church ritual in common use. But as grammar was regarded as introductory and instrumental to the study of divinity, it must, in some instances, have included Greek and Hebrew. Hence the definition of Dr. Johnson, adopted by courts of equity, that "a grammar school is a school in which the learned languages are grammatically taught."

Under the Catholic sway, therefore, all churches of any wealth or eminence were obliged to maintain teachers of theology and masters of grammar. And every parish priest was bound to have a free school in his house for beginners.<sup>b</sup>

These important obligations imposed upon the church, were enforced in this country by sundry canons passed from time to time between the Conquest and the Reformation; and unless we are to suppose an incredible degree of ecclesiastical disobedience, the inference is unavoidable that, (regard being had to the comparative darkness of those ages,) the education of the people, according to the notions which prevailed, was carefully, and even systematically provided for.

But it was from the monks, especially those of the famous Benedictine order, (which predominated in England,) that instruction mainly flowed. For not only did they charge themselves with the maintenance of the poor, but schools of all kinds, (the instruments of their policy,) were objects of their most careful cultivation.

Such having been the state of matters before the Reformation, let us for a moment turn to some remarkable reflections which fell from Lord Eldon, in deciding a very instructive case reported by Mr. Russell,—that of *The Attorney General v. Lord Mansfield*,<sup>c</sup> where the great judge, adverting to the extraordinary number of grammar schools founded and endowed in this country by King Edward 6, thus expressed him-

self:—"Let it be observed that it was a part of the policy of the times that grammar schools should be instituted overalmost the whole of the kingdom. Whether those institutions were or were not useful in promoting the progress of the Reformation, is a question which it would not be difficult to solve; but that it was apprehended that they would be extremely useful to the progress of the Reformation no man can doubt."

Lord Eldon appears to have considered grammar schools as a species of invention devised by the piety of the early Protestants; whereas, we have seen that these institutions were no new contrivance, but, on the contrary, were in existence many hundred years before the era of the happy Reformation. The noble and learned lord says, the question whether grammar schools were calculated to accelerate the march of the Reformation "would not be very difficult to solve." With deference to so venerable an authority, the solution of that question would not have been so easy; for, (to abstain from any lengthened argument,) let us just ask how was it likely that the *new* opinions would be necessarily advanced by an instrument which had so long been subservient to the *old*? But Lord Eldon is clear, at all events, that "it was *apprehended* grammar schools would be extremely useful to the progress of the Reformation." Why so? Grammar schools were undoubtedly regarded as good things in themselves. The statesmen who figured in the reign of Edward 6, knew that by the suppression of the ancient establishment the people had been deprived of many educational advantages. The distribution of grammar schools, therefore, both by Edward and his sister Elizabeth, was apparently intended for no other purpose but to bring matters back in some degree to the position in which they had stood before the Reformation. If the Legislature who framed the well-known statute 1 Edw. 6, c. 14, vesting the property of religious houses, guilds, and chantries, in the crown for the purpose of endowing grammar schools, had no other object in view but the forwarding of the reformed religion, they surely would have thought of something better adapted for that purpose than the mere teaching of Greek and Latin,—languages, which however indispensable in the Catholic times, were of no popular use after the translation of the Scriptures and the establishment of an English liturgy.

In the Legal Observer of the 7th of February last, we took occasion to comment on the case of the Louth grammar school, then under argument before the Vice-Chancellor of England, and finally decided by his Honor on the 18th instant. There it was contended by Mr. Stuart, Q. C., (with whom were Messrs. Wilcock, Holt, and Adams, on behalf of the plaintiffs,) that, upon a charter of Edward 6, erecting a corporation to manage the affairs of the grammar school, (founded by the same charter,) the true construction was to hold that the school should have the benefit of such parts of the property as appeared to have belonged to reli-

<sup>b</sup> We say for beginners, for it is plain that the school of the parish priest was for the rudiments of education, although it might have gone higher. The words of the mandate were, that "Parish priests should have a school of learners at their houses; and if any good man man would trust his *little ones* to them for lore, they should right gladly receive and kindly treat them. They should not, however, demand for their lore anything of the parents besides what the parents might do of their own will." Lingard's Anglo-Saxon Church, vol 1, p. 169.

<sup>c</sup> 2 Russ. 501.

gious Houses, because the above statute vested that description of property in the crown for the express purpose of promoting education and charity; whereas, other property included in the grant which had not come to the crown in the same way, ought to be handed over to the burgesses of Louth, there being words in the charter which manifested an intention on the part of the monarch to benefit the town as well as the school.

But in reply to these arguments, it was demonstrated by Mr. Bethell, Q. C., (who was followed on the same side and at great length by Messrs. Parker, Gankrien, and Macgibbon, for the defendants,) that this place of Louth had *ab antiquo* been a seat of learning and education; that the king's benefaction proceeded on a consideration of the fact that Louth, to use the words of the charter, "was very populous," and was a place which, before the date of the grant, "had been much resorted to by lads and youth in search of knowledge and instruction;" and therefore, that the intent of the grant, to which the court must give effect, was to restore the character of the place to its pristine state by the re-establishment of an institution which by all the evidences in the cause was proved to have existed anterior to the downfall of the Catholic religion. There was nothing but education in the monarch's mind. The benefit of the town was a collateral result which it was anticipated would be brought

about by the foundation and liberal endowment of this free grammar school,—nothing being more likely to increase the prosperity of a country town than the establishment of such a seminary within its precincts.

These arguments of the defendants have had their due effect on his Honour's mind; for in delivering his decision, (after adverting to the provisions of the 1 Edward 6, c. 14, and expatiating on the striking expression of intention contained in it, that the revenues of religious houses should be made subservient to the diffusing of knowledge by means of grammar schools throughout the kingdom,) his Honour remarked, that "the charter of Edward showed the king's general anxiety for the spread of intelligence; and in particular with respect to Louth, showed his recognition of the educational claims of that place, in regard not only that it was populous in itself, but that it *had been* distinguished for the confluence of *pueri* and *juvenes* resorting to it, before the charter, for purposes of learning. His Honour, for these reasons, (and for others which were involved in detail, and which we consequently do not here recapitulate,) thought the plaintiffs, the Louth burgesses, had no *locus standi* as against this ancient school; and that the bill which they had filed being but an experiment, the court had no alternative but to dismiss it with costs.

## ATTORNEYS TO BE ADMITTED,

ON THE LAST DAY OF EASTER TERM, 1846.

*Pursuant to Judges' Order.*

### Queen's Bench.

#### Clerks' Names and Residences.

#### To whom Articled, Assigned, &c.

Bramwell, Thomas Vicars, 9, Howard Street,  
Strand; and Smith Street, Chelsea.  
Long, Walter Searley, 31, Nicholas Lane  
Smith, John Bridgeman, 22, Holles Street,  
Cavendish Square  
Whitlock, John William, Putney

William Wollam, Stockport.  
Samuel Long, Portsea.  
Nicholas Gedye, George St., Mansion House.  
Henry Sewell Stokes, Truro.  
Benjamin Austen, Gray's Inn.

## QUESTIONS AT THE EXAMINATION.

*Easter Term, 1846.*

### I. PRELIMINARY.

1. Where and with whom did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
3. Mention some of the principal law books which you have read and studied.
4. Have you attended any and what law lectures?

### II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. Within what time after the service of a writ of summons is it necessary to indorse thereon the day of the service; and if omitted, what is the effect?
6. In reckoning time, how is the calculation to be made? for instance, a defendant obtaining an order for eight days' time to plead on the first of the month, on what day must he deliver the plea?
7. Can a defendant be arrested under any and what circumstances upon *meane process*, and what steps are necessary to be taken?



8. In what case can a defendant require the plaintiff to give security for costs? and what is the mode of proceeding to obtain it?

9. What are the different sorts of execution to enforce a judgment?

10. Within what time must application be made to set aside an award?

11. How can a witness not attending on his subpoena be made answerable for his neglect?

12. What is a *Stet Processus*, and the effect of it?

13. What is the effect of a juror being withdrawn?

14. What is a judgment *non obstante Verdicto*, and the effect of it?

15. What is the commencement of an action of ejectment?

16. In case a landlord wish to defend an action of ejectment brought against his tenant, how can he obtain liberty to do so?

17. Can a declaration in ejectment ever be served on the wife of a tenant, and under what circumstances?

18. How soon after issue joined can a defendant move for judgment, as in case of a nonsuit in a town cause and in a country cause respectively?

19. What cases can a judge of one of the superior courts direct to be tried before the sheriff?

### III. CONVEYANCING.

20. Who is tenant in fee simple?

21. If a man would purchase lands or tenements in fee simple, what words should he have in his purchase, and why? In what three kinds of hereditaments may a man have a fee simple?

22. By force of what statute is fee tail?

23. What is tenant in tail general; and what tenant in tail special?

24. What is a reversion?

25. If lands be given to a man and the heirs male of his body begotten, who shall, and who shall not inherit?

26. What is a tenancy for term of life? What, by common parlance, is he called who holds for the term of his own life; and what he who holds for term of another's life?

27. If A., tenant in fee simple, make a lease of lands to B., to have and to hold to B. for term of life, without mentioning for whose life it shall be, what shall it be deemed, and why?

28. What is tenancy for term of years? and what is the lessee when he enters by force of the lease?

29. Whence is "lease" derived?

30. What is a tenancy at will? Why is the lessee called tenant at will?

31. Of what two sorts are parceners? Why are they called parceners?

32. Who are joint tenants? Why are joint tenants so called? What quality have joint tenants which co-parceners have not?

33. Who are tenants in common; and why are they so called? By what three means may there be tenants in common? What is the essential difference between joint tenants and

tenants in common? What property is common to them both?

34. Define and explain the nature and effect of attornment?

### IV. EQUITY, AND PRACTICE OF THE COURTS.

35. State the principal heads under which the equity jurisdiction of the Court of Chancery may be described.

36. State some cases in which a Court of Equity will relieve against the defective execution of a deed.

37. Is there any, and what, advantage in the proceedings of a Court of Equity over those of a court of common law in questions of account, and state some of the principal cases in account in which recourse is ordinarily had to a Court of Equity?

38. The Court of Chancery prohibiting persons filling certain characters from becoming purchasers, name the principal of such characters, and upon what grounds the prohibition is founded.

39. Enumerate some of the cases in which the Court of Chancery will grant an injunction, and what is the difference between a special and a common injunction, and what are the modes in which they are respectively obtained?

40. Explain the difference between the jurisdiction of the Court of Chancery and the ecclesiastical courts in the case of wills?

41. What is the difference between the remedies supplied by the Court of Chancery and the courts of common law in the case of nonperformance of a contract or agreement. In what cases of contract will the Court of Chancery enforce a specific performance, and in what cases will it refuse to interfere?

42. State some of the cases in which a Court of Equity will support a voluntary conveyance; and again cases in which the court will set such a conveyance aside; and when will the court refuse to interfere?

43. Within what time must a defendant put in his answer to an original bill, an amended bill, and a supplemental bill, respectively; and is there any, and what distinction in this respect between a town and country cause?

44. Under what circumstances, and upon what terms, may a plaintiff and defendant respectively dismiss a bill before decree? and how may a bill be dismissed after decree?

45. How are orders and decrees of the court enforced, particularly where money is directed to be paid into court, or any other act is directed to be done within a limited time, and where money or costs are ordered generally to be paid to a person?

46. In what cases are the vacations not reckoned in the computation of times of procedure?

47. What is the effect of passing publication? when does it pass? how is it passed? and within what time after publication is the cause to be set down for hearing?

48. Name and give a short description of the several writs usually issued in the course of a suit.

49. Describe a traversing note, and the effect of it; and state how is issue joined?

**V. BANKRUPTCY, AND PRACTICE OF THE COURTS.**

50. What are the principal statutes now in force relating to bankrupts?

51. What are usually termed the requisites of a fiat?

52. What are the amounts now required for a petitioning creditor's debt?

53. When, and in what manner, was the power of committal conferred upon the courts of commissioners in bankruptcy, and in what cases is it exercisable?

54. What is the nature of the dealing required to constitute a trading within the meaning of the bankrupt laws?

55. What persons are deemed scriveners within the meaning of the bankrupt laws?

56. When does a trader who has ceased to trade render himself liable to the bankrupt laws?

57. Under what enactment, and in what manner, can a trader issue a fiat against himself?

58. Under what circumstances may a fiat be issued against an executor?

59. In what manner, and at what time, does the estate of a bankrupt become vested in his assignees?

60. State the alterations effected by the 2 & 3 Vict. c. 11, and the 2 & 3 Vict. c. 29, with regard to conveyances, contracts, and dealings by and with bankrupts.

61. What is the statute under which a fiat in bankruptcy may be issued against a joint-stock company? and what the acts of bankruptcy to warrant the fiat?

62. Before whom are affidavits used in our bankruptcy courts to be sworn as well in England as abroad?

63. In what manner are proceedings in bankruptcy made evidence without formal proof?

64. Does a covenant in a lease not to assign without the landlord's consent remain available against the assignees on the bankruptcy of the lessee? State the reasons for your answer.

**VI. CRIMINAL LAW.**

65. Which is the supreme court of criminal jurisdiction in this country? And who is the supreme coroner of the realm?

66. Will a writ of error lie for the improper admission of evidence on a trial for a misdemeanour?

67. Does the breach of an act of parliament constitute an offence at common law, *per se*?

68. A man has been convicted of misdemeanour, and been sentenced to imprisonment, which he has suffered in part: the record of his conviction is removed into a court of error, and by that court the judgment of the court below is reversed, upon the ground of error in the indictment, and he is thereupon discharged from prison: Can he be proceeded against *de novo* for the same offence?

69. Can there be accessories before the fact in murder, manslaughter, treason, or trespass,

or in any, and which of them? and give the reason for the distinction.

70. What is the proper venue in an indictment for an offence committed in the district subject to the jurisdiction of the central criminal court?

71. Is the common law offence of forgery, felony or misdemeanour? And is the offence altered in this respect by any statutes?

72. Is the writ of certiorari in criminal cases demandable of right by prosecutors or defendants, and how is it obtained? What officer is entitled to it as of right?

73. Where several defendants are indicted together, and on the application of one of them a writ of certiorari is obtained, does this in any way affect the other defendants?

74. What is the effect of a writ of procedendo?

75. What is the rule in criminal matters as to controverting the truth of facts alleged in a return to a writ of habeas corpus? and is there any difference in this respect in matters not criminal?

76. How many jurors is a prisoner entitled to challenge peremptorily in the respective cases of treason and felony?

77. Is there any mode of proceeding, other than by impeachment, presentment, or indictment, against persons accused of treason, felony, or misdemeanour? If so, state what it is, and to which of these offences it is applicable?

78. Is the joinder in an indictment of counts charging felony and counts charging misdemeanour allowable?

79. Is a defendant entitled to a copy of the indictment in felony or misdemeanour, or in either, before his trial?

**RECENT DECISIONS IN THE SUPERIOR COURTS.**

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

**Rolls Court.**

**COSTS.—GRATUITIES TO CLERKS IN PUBLIC OFFICES.**

*A sum of three guineas was paid by way of gratuity to the clerks in the office of the Accountant General, for expedition in completing the transfers, &c., under an order of the court.*

*Held, that such a payment could not be claimed against the client, on taxation of the costs.*

A PETITION was presented in this case, for leave to except to the Master's certificate of taxation, on several grounds, one of which was, that he had allowed the sum of three guineas, which was charged as paid for gratuities to the clerks of the Accountant General, and which the petitioner insisted ought not to have been allowed.

Mr. Kindersley and Mr. Craig for the petitioner.

Mr. Turner and Mr. Prior, *contra*.

The Master of the Rolls, after stating the facts of the case, said, he found gratuities mentioned in the Report of the Fee Commission of 1830, and the evidence of Seth Ward, and of the Chancery Commission of 1825. The report of that commission recommended that such gratuities should be abolished, but no order was made. In 1830, the clerks of the Accountant General, in their returns of fees and emoluments, included gratuities, and it could not be denied that it was customary to make such payment, and that there was no concealment. The practice was not in effect forbidden. His lordship added, that he had been informed that when the duty of taxation was performed by the Masters in ordinary, these gratuities were allowed by some, and occasionally allowed by others, while others again refused to allow them under any circumstances. It did not appear that any such gratuities were claimed of right, or that solicitors were less entitled to have their business done who did not pay them; and, under these circumstances, and in the absence of any express authority in this case from the client, his lordship said he was of opinion that the client was under no obligation to pay the sum of three guineas which had been objected to.

*Re Bedson.* March 19th, 1846.

#### Vice-Chancellor of England.

##### CONTINGENT DECREE.

*A decree contingently affecting a property is not a bar to an independent subsequent order about it.*

THIS was a motion for a receiver in a creditor's suit, in which a previous decree had been made, directing the application of the property of which a receiver was sought contingently on a certain security proving deficient.

Mr. Bethell and Mr. Terrell for the motion.

Mr. Abraham, *contra*, urged that by the former decree the assets were already in the possession of the court, but

His Honour held, that such a decree was no bar to a second order respecting the same assets, and granted the motion.

*Tannen v. Carter.* March 26, 1846.

#### Queen's Bench.

(Before the Four Judges.)

##### TRESPASS.—LIABILITY OF ATTORNEY.

*Where an attorney by his conduct induces a sheriff to make a wrongful seizure under a writ of execution, he is equally liable with the sheriff in an action of trespass.*

The attorney in an action gave a writ of *fiery facias* to the sheriff, on which he indorsed, "The defendant resides at Wolverton, in Bucks, and is an innkeeper," by reason of which the sheriff was induced to seize the goods in the house where the defendant resided, although it turned out that the house and property belonged to another person.

*Held, that the attorney was liable in an action of trespass.*

In an action of *Gandill v. Doer*, the plaintiff obtained a verdict, and a writ of *fiery facias* issued to the sheriff to levy on the goods of the defendant. Before the writ of execution was given into the hands of the sheriff, Cheshire, the attorney for the plaintiff, indorsed on the writ as follows:—"The defendant resides at Wolverton, in Bucks, and is an innkeeper." The sheriff, in pursuance of the writ, levied on the goods which he found in the house at Wolverton, where the defendant was residing. It appeared that the defendant lived with his mother-in-law, Mrs. Rowles, and assisted her in keeping the Radcliff Arms at Wolverton, and the goods seized belonged to the mother-in-law, whereupon an action of trespass was brought by Rowles against the sheriff, the plaintiff in the former action, and his attorney, Cheshire. The defendants pleaded—1. Not guilty. 2. That the house was not the house of the plaintiff. 3. That the goods seized were not the goods of the plaintiff. The case was tried before Mr. Justice Patteson, on the Norfolk circuit, and a general verdict found for the plaintiff, with forty shillings damages, the learned judge reserving leave for the defendant Cheshire to move to enter a nonsuit as regarded him, provided the court should be of opinion that he had not made himself liable in this action. An affidavit was put in to show that Cheshire not only acted as attorney for the plaintiff in the first action, but that he was actually interested in the debt recovered.

Mr. Pashley and Mr. Power showed cause.

The jury having found all the issues in favour of the plaintiff, it must be taken that the house and goods belonged to the plaintiff, and that the indorsement on the writ of *fiery facias* was false in fact. The principle is laid down in the cases of *Braham v. Barker*,<sup>a</sup> *Codrington v. Lloyd*,<sup>b</sup> and *Green v. Elgie*,<sup>c</sup> that where an attorney deliberately directs the execution of a bad writ or warrant, he takes upon himself the chance of all the consequences. And where a sheriff commits a trespass by seizing the goods of the wrong person under a good and valid writ, the attorney is also a co-trespasser, if he in any manner directs the sheriff to make such wrongful seizure. The question, therefore, is one for the consideration of a jury, whether the sheriff in the execution of this writ was influenced or controlled by the indorsement made by the attorney; and they, in fact, having found that he was misled by this indorsement, the court will not disturb the verdict.

Mr. O'Malley, *contra*.

The general principle of the liability of an attorney in the cases cited is not disputed, but this case is distinguishable. The attorney must give the best description he can of the person against whom the writ issues, or at least the one by which he is most likely to be dis-

<sup>a</sup> 3 Wilson, 368. <sup>b</sup> 8 Adol. & Ellis, 449.

<sup>c</sup> 5 Q. B. R. 99.

covered. And it appeared that Doer was residing in the house of the present plaintiff, and was ostensibly acting as if the property belonged to him. There is nothing in the indorsement on the writ which should induce the sheriff to seize the goods of the plaintiff, he seizes at his peril the goods of any other person than the one against whom the writ issues. In *Sowell v. Champion*,<sup>4</sup> the court intimated an opinion that an attorney could not be held a joint trespasser with the sheriff, unless he so conducted himself as to induce the officer to act in a particular manner. If the officer had been misled by the negligent act of the attorney, and thereby induced to seize the goods of the wrong person, the remedy against the attorney would be an action on the case, and not an action of trespass.

Lord Deane, C. J. The principle laid down in the case of *Sowell v. Champion*,<sup>4</sup> is that the attorney is not liable unless he directs a wrongful seizure to be made. Here the question is, whether this defendant, by the indorsement he made on the writ of *fiat facias*, did direct the goods of the plaintiff to be seized. I think he did. He directed him to go to the house in which Doer lived, and induced him to seize the goods he found there, which rendered him liable to an action of trespass. This view of the case is strengthened by the fact that the defendant was interested in the judgment which had been obtained against Doer.

Mr. Justice Patteson concurred.

Mr. Justice Williams. I am of the same opinion. I think the indorsement on the writ was of such a description as might induce the sheriff acting on those instructions to seize the goods in the house where he was informed Doer lived. The attorney would be liable if he by his conduct induced the sheriff to commit the wrongful act, and the question how far he was misled by the indorsement is matter of evidence, and the jury having found for the plaintiff, I do not see any ground for disturbing the verdict.

Mr. Justice Wightman. I am of the same opinion. The sheriff is liable for seizing the goods of the plaintiff, and the attorney is also a joint trespasser, if he directs him to seize the wrong goods. The officer was told that Doer was an innkeeper, and that he resided at Wolverton, and he might well understand from such directions that he was to seize the goods in the house where such person was residing.

Rule discharged.

*Rowles v. Senior and others.* Easter Term. 1846.

#### Queen's Bench Practice Court.

##### DISTRINGAS TO COMPEL APPEARANCE.—

*A distringas to compel appearance granted upon an affidavit stating that the defendant was confined to his bed and could not be seen, although it did not state that he kept out of the way to avoid being served.*

<sup>4</sup> 6 Adol. & Ellis, 407.

*Corrie* moved for a distringas to compel appearance, upon an affidavit stating that three calls had been made at the defendant's house for the purpose of serving a writ of summons upon him, and that on each occasion the deponent mentioned the object of his call; that on the first call, on the 21st of March, deponent was told by the housekeeper that the defendant was at home, but was asleep and could not be seen, and, upon inquiry, was informed, that it was not very likely that the defendant could be seen on the 24th instant; deponent, however, said that he would call on that day at three o'clock in the afternoon; he called accordingly, and then saw a housemaid, who said that the defendant was at home, but was very ill in bed and could not be seen; whereupon the deponent made an appointment for the next day at 4 o'clock in the afternoon. He did call at the time appointed, and being again informed that defendant was at home, but could not be seen, delivered a copy of the writ of summons to the housekeeper, and desired her to deliver it to the defendant, to which she replied, "Very well," and left deponent. The affidavit concluded by stating the deponent's belief that the defendant was in the house during each call, and that he had been informed that defendant had been confined to his house, and almost, if not quite, bedridden for many years. The difficulty was, that the affidavit did not state that the defendant kept out of the way to avoid being served; but it was submitted that it was sufficiently shown that the defendant could not be compelled to appear to the action without some more efficacious process; and that therefore the requirements of the statute (2 Will. 4, c. 39, s. 3,) were complied with.

*Coleridge, J.*, after expressing some doubt whether the affidavit was sufficient, granted the application.

Rule accordingly.

*Watkins v. Jones.* Easter Term, 1846.

#### Court of Bankruptcy.

##### INSOLVENT PETITIONING TWO COURTS.

*An insolvent who has petitioned the insolvent debtor's court has a locus standi in the bankruptcy court, under 7 & 8 Vict. c. 96, if his schedule contains any debts contracted subsequent to the date of his petition to the insolvent court.*

Frederick Fox Cooper, described as a comedian, was taken in execution in an action for the recovery of a debt under 20l., in the month of July, 1844, and, whilst in prison, petitioned the court for the relief of insolvent debtors, under stat. 1 & 2 Vict. c. 110, and was admitted to bail, and a day appointed for the hearing of his petition, before one of the commissioners at Portugal Street. In the month of August, 1844, and before the day appointed for the hearing of the insolvent's petition, he applied to a judge at chambers, and obtained an order, under the stat. 7 & 8 Vict. c. 96, sect. 58, for his discharge from custody, and by virtue of

such order was discharged, and did not appear upon the day appointed for the hearing of his petition at Portugal Street. The insolvent afterwards petitioned the court of bankruptcy, under the provisions of the stat. 7 & 8 Vict. c. 96, s. 2, and now came before Mr. Commissioner *Fane*, upon such petition.

Upon the part of a judgment creditor, it was now contended, that the petitioner had no *locus standi* in this court, inasmuch as he had already voluntarily chosen another tribunal, by petitioning the court for the relief of insolvent debtors, and under the stat. 1 & 2 Vict. c. 110, sec. 137, all the estate and effects of the insolvent were vested in the provisional assignee by an order of that court. By entertaining the insolvent's petition to this court, it was said, there would be a clashing of jurisdiction inconvenient and detrimental to the interests of creditors, a result which the commissioners in bankruptcy had, in several cases, expressed their determination as far as possible to prevent. It was argued, on the other hand, that the insolvent, by availing himself of stat. 7 & 8 Vict. c. 96, s. 58, and obtaining his discharge from custody under it, had ousted the court for the relief of insolvent debtors of all jurisdiction, and that his petition to that court was a nullity.

Mr. Commissioner *Fane*, (after consulting Mr. Commissioner *Holroyd*.) determined, that as the petitioner's schedule contained several debts which had accrued after the date of his petition to the court for the relief of insolvent debtors, in July, 1844, the petitioner had acquired a *locus standi* in this court. He therefore felt himself bound to entertain the insolvent's petition, although his estate and effects in 1844, had vested in the provisional assignee of the Insolvent Court.

An objection was then taken, that the insolvent was a trader within the meaning of the Bankrupt Acts, and owing more than 300*l.*, and upon this ground his petition was dismissed.

*In re Frederick Fox Cooper*, 23rd April, 1846.

#### SMALL DEBTS ACT.

*The application for a summons to a debtor, under the 8 & 9 Vict. c. 127, must be signed by the creditor himself, and the signature of an attorney or agent of the creditor will not be sufficient.*

An attorney produced a judgment for a debt under 20*l.*, and asked for a summons under the stat. 8 & 9 Vict. c. 127, s. 1. He was informed that there must be a petition or note in writing, according to the form in schedule (B.), to the act annexed. The attorney then presented a note in writing, signed by himself, and describing himself as the plaintiff's attorney. The registrar refused to grant a summons upon an application in this form. The attorney then applied to Mr. Commissioner *Goulburn*, stating that he was an attorney of the court of bankruptcy, and that he was also the attorney

on record for the plaintiff on whose behalf he applied, as appeared by the office copy of the judgment which he now produced. He submitted that, under those circumstances, he was entitled to take out a summons for the plaintiff, under the Small Debts Act.

Mr. Commissioner *Goulburn* directed the attention of the applicant to the language of the stat. 8 & 9 Vict. c. 127. The 1st section enacted that a commissioner should grant a summons, according to the form in schedule (A) annexed, "upon the application of such creditor by any petition or note in writing, according to the form in schedule (B) annexed." Upon turning to the form in schedule (B), it was in these words:—"Be pleased to summon *C. D.*, of \_\_\_\_\_ to answer touching the debts due to me by the Judgment [or order] of the court of [set forth the style or other sufficient description of the court which gave the judgment or made the order] on my behalf. Signed [party's name] of \_\_\_\_\_." It was quite clear upon a perusal of the form given by the act, that the legislature contemplated that the application should be made by the creditor, and not by his attorney, and he therefore felt bound to decline granting a summons in any case in which the application did not appear to be signed by the creditor himself.

*Anonymous.* 25th April, 1846.

#### ATTESTATION OF INSOLVENT'S PETITION.

In the case reported last week, *In re E. F. Bell*, it afterwards appeared, that Mr. Cormack, who signed the petition as Mr. Benham's clerk, was himself an admitted attorney of the superior courts, though not on the roll as an attorney or solicitor of the Court of bankruptcy, and under those circumstances, Mr. Commissioner *Fane* said, he thought the objection was not entitled to any weight.

#### THE EDITOR'S LETTER BOX.

IN an early number we shall commence a new series of papers, which we hope will be found useful, consisting of some of the most important cases in law and equity, with notes of subsequent decisions; and these will be followed or interspersed with "Leading Statutes" and notes of the construction of the courts.

The next series of the Digest, comprising seven or eight parts of the Common Law Reports, will be commenced in the ensuing, or an early number.

A Monthly List of New Law Books, with a short notice of the scope and professional use of each, shall be resumed.

We think the best book for our correspondents at Dewsbury, is Whishaw's Law Dictionary: it is concise, but quite comprehensive enough for the purpose required.

# The Legal Observer.

SATURDAY, MAY 9, 1846.

—“Quod magis ad nos  
Pertinet, et noscire malum est, agitamus.”

HORAT.

## THE LAW OF VENDOR AND PURCHASER.

### DAMAGES FOR LOSS OF BARGAIN.

As a general proposition, it may be affirmed that every vendor holds himself out to the world as competent to give a good title. This seems to follow from the elemental principles of the contract of sale; for by all the definitions of that contract the vendor is not only understood to undertake that the thing sold is his own, but that he can confer a proprietary right on the purchaser. Thus, if I sell a quantity of corn, and fail to execute my contract, I am liable to an action for damages.

But suppose I sell an estate, and it turns out that my title is bad or defective. Can the purchaser in that case recover damages for the loss of his bargain? He cannot; and unless he impeach me of fraud, I am bound to pay him nothing but his costs out of pocket; for, as Lord *Hardwicke* said, there is no such thing known in England as a mathematical certainty of a good title to land.<sup>a</sup>

The leading case on this point is that of *Flureau v. Thornhill*,<sup>b</sup> where, on a purchase by auction, of a rent issuing out of certain houses, the vendor proved incapable of giving a title, and the purchaser thereupon brought his action for damages. The evidence was contradictory; that adduced on behalf of the plaintiff going to show that his bargain was a remarkably good one; while the evidence on the other side established that it was by no means advantageous, the auctioneer in fact having been ordered to let the property go for considerably less than the sum at which it was knocked down to the plaintiff. The

defendant had moreover paid the plaintiff's deposit with interest into court. But the jury, contrary to the direction of Chief Justice *De Grey*, gave a verdict for 20*l*. In other words, the jury did not think that payment back of the deposit with interest was sufficient. They held that the purchaser was entitled to compensation for the disappointment sustained by him, in consequence of the vendor erroneously, though not fraudulently, representing himself as competent to give a good title, and inducing the purchaser to deal with him on that footing.

On a motion for a new trial, however, the Chief Justice said, “I think the verdict *wrong in point of law*. I do not think the plaintiff can be entitled to any damages for the fancied goodness of the bargain which he supposes he has lost.” And Mr. Justice *Blackstone*, (the reporter of the case,) following the Chief Justice, and concurring with him, stated the ground of the decision to be, that “these contracts are merely *upon condition*, frequently expressed, but always implied, that the vendor has a good title.” Hence the purchaser of an estate never assumes the title to be good, but always calls for proof of its validity. He acts on this principle, and therefore the loss of his bargain, however profitable it might have proved, will be no ground for damages unless he can establish fraud against the vendor.<sup>c</sup> For the same reasons it was held in this case of *Flureau v. Thornhill*, that the purchaser was not entitled to any compensation for the loss he suffered from having sold out of the funds to meet the price, for he had done so prematurely.

<sup>a</sup> *Lyddal v. Weston*, 2 Atk. 20.

<sup>b</sup> 2 W. Black. 1078.

<sup>c</sup> *Bratt v. Ellis*, and *Jones v. Dyke*, 3 Sug. Vend. & Pur. Appx. Nos. 7 & 8.

We must acknowledge, however, that Lord *Tenterden* on one occasion made a remark approximating to a dissent from the reasoning pursued in *Flureau v. Thornhill*. The observation to which we refer fell from his Lordship in *Hopkins v. Grazebrook*,<sup>d</sup> a case which came before the Court of King's Bench, in 1826. There the defendant had contracted for the purchase of an estate, but had not obtained a conveyance. In this situation, he sold the estate by auction, stipulating to make a good title by a certain day. This however he was unable to do, as his own vendor refused to convey. The second purchaser, therefore, brought an action against him, and recovered not only the expenses which he had incurred, but also damages for the loss which he had sustained by not having had the contract carried into effect. The commentary of Lord *Tenterden*, C. J., though characteristically cautious, may be thought to cast a doubt on *Flureau v. Thornhill*, for he said—"On the present occasion I will only observe that if it is advanced as a general proposition, that where a vendor cannot make a good title, the purchaser shall recover nothing more than nominal damages, I am by no means prepared to assent to it. If it were necessary to decide that point, I should desire to have time for consideration." He then proceeds to distinguish the case in hand from that of *Flureau v. Thornhill*, by showing that in *Flureau v. Thornhill* there was some title in the vendor, whereas, in *Hopkins v. Grazebrook* there was not even the "shadow of a title." Mr. Justice *Bayley*, following his Lordship, observed that "the case of *Flureau v. Thornhill* was very different from this; for here the vendor has nothing but an equitable title. Now, where a vendor holds out an estate as his own, the purchaser may presume that he has a satisfactory title; and if he holds out as his own that which is not so, I think he may be very fairly compelled to pay the loss which the purchaser sustains by not having that for which he contracted."

There is nothing to prevent a man from selling before he has himself received a conveyance. It is very often convenient and advantageous to do so. But the step is attended with this risk, that if the vendor in such circumstances be rash enough to represent himself as having a good title, he will be bound to make compensation in damages to the purchaser for

disappointment of his bargain. This is all that was decided in *Hopkins v. Grazebrook*; a case which we hardly think deserves the censure bestowed upon it by Sir *Edward Sugden*, namely, that it "will tend to much litigation before the distinction which it introduces is thoroughly understood." The distinction we think quite intelligible.

Common candour requires that a vendor selling before he has received a conveyance should apprise the purchaser of the true state of matters. If he omit to do this, it is but justice that he should be liable in damages.

In the case of *Walker v. Moore*, decided by the Court of King's Bench, in 1829, the plaintiff having contracted for the purchase of an estate, an abstract showing a good title was delivered to him by the vendor. The plaintiff, before testing the accuracy of this abstract by an examination of the original deeds, sold certain parts of the property at a profit. On subsequently comparing the abstract with the deeds, it was discovered that the title was defective; whereupon the sub-purchasers refused to complete their purchases. In these circumstances, the plaintiff not only refused to complete his purchase, but brought an action against the original vendor, claiming as damages the expense which he had incurred in the investigation of the title; the profit which would have accrued from the re-sale of the property; the expense attending that re-sale; and the sums which he was liable to pay to the sub-contractors for the expenses incurred by them in examining the title. The decision of the court was, that he was entitled to recover only the expenses he had himself incurred in the investigation of the title, and but nominal damages for the breach of contract, as no fraud could be imputed to the defendant; for it was held that the plaintiff ought to have examined the abstract with the title deeds before taking the steps in respect of which he claimed damages, inasmuch as by the exercise of ordinary care he might have averted the loss which had arisen from his negligence; and as there was no fraud imputable to the defendant, no claim for damages was sustainable on the part of the plaintiff. This case is therefore confirmatory of *Flureau v. Thornhill*. But they both clearly imply, that if fraud or unfairness could have been brought home to the defendants, the result would have

<sup>d</sup> 6 Barn. & Cres. 31.

\* 2 Vend. & Pur. 49.

been different. Indeed one of the judges, (Mr. Justice *Baillie*,) in *Walker v. Moore*, laid down this proposition, that "if there were *mala fides* in the original vendor, he was not prepared to say that the purchaser might not recover the profit which would have arisen from the re-sale."

When we say, therefore, that damages are not recoverable for the purchaser's disappointment, the proposition must always be taken subject to this qualification, that on the part of the vendor there has been honour and perfect good faith throughout the transaction.

## POINTS IN COMMON LAW PRACTICE.

### JUDGMENT AFTER PEREMPTORY UNDERTAKING WHEN CAUSE IS MADE A REMANET.

WE had occasion in a former number to advert to the extreme strictness with which the courts enforced what is called a peremptory undertaking,<sup>a</sup> and then stated the result of two remarkable cases, in one of which,<sup>b</sup> a cause was made a remanet in consequence of the illness of the judge who was to have tried it, and the plaintiff was thereby considered to have made such a default as entitled the defendant to sign judgment as in case of a nonsuit. In the second case,<sup>c</sup> the plaintiff being under a peremptory undertaking to proceed to trial at a particular sitting, set down the cause for trial on the evening of the last day allowed for so doing, and from press of business it was made a remanet. The plaintiff having taken no steps in the following term to enlarge or discharge his peremptory undertaking, the defendant obtained judgment as in case of a nonsuit, and the Court of Common Pleas refused to set it aside.

Both the cases above referred to were considered and dissented from in a late case, or rather a series of cases in the Court of Exchequer. In *Lumley v. Dubourg*,<sup>d</sup> the plaintiff had given a peremptory undertaking to proceed to trial at the London sittings after Easter Term, and performed his undertaking so far, that he gave notice of trial, entered the cause, and carried in the

record in due time. The court only sat for two days at *nisi prius* in London, and from pressure of business the cause was made a remanet to the sittings after Trinity Term; but meanwhile, the defendant obtained a rule for judgment as in case of a nonsuit for not proceeding to trial pursuant to the peremptory undertaking.

The matter came before the court upon a rule to show cause why the rule for judgment, as in case of a nonsuit, should not be discharged, and the peremptory undertaking enlarged to the sittings after Trinity Term. The cases already adverted to, were strongly pressed upon the court by the defendant's counsel; but the barons declined to yield to the authority of *Ward v. Turner*, or *Petrie v. Cullen*, which latter case, they stated, was found on inquiry to have proceeded upon peculiar circumstances. "Where a plaintiff gives a peremptory undertaking," (said the Lord Chief Baron,) "he thereby undertakes to proceed to the trial of the cause according to the practice of the court. How then can it be said that he neglects to do so, when he is ready to try, but from the illness, or by the act of the judge, the cause is made a remanet? It may have been, that if in this case the plaintiff had entered the cause sooner, it would have been tried, but a party having a particular time to enter a cause, is entitled to the whole time which the course and practice of the court allows for that purpose, and it cannot be negligence in a suitor, if he neglects to enter it sooner than the practice requires." *Alderson, B.*, referred particularly to the language of the stat. 14 Geo. 2, c. 17, on which the practice as to judgment in case of a nonsuit is founded, and observed that he could see no reason for putting a different construction on the word *neglect* as it was used in the first branch and the latter part of the section. It had been argued, that a peremptory undertaking was an undertaking to try at all events, but that was not so, for the rule discharging a rule for judgment, as in a case of nonsuit, on a plaintiff's giving a peremptory undertaking, was properly the act of the court, which gave the plaintiff additional time to try the cause.

It seems that the same point was again brought under the consideration of the Court of Exchequer, in a case of *Loud v. Green*, on the 29th May last, and in a case of *The Pacific Steam Navigation Company*

<sup>a</sup> *Ante* vol. 30, p. 276.

<sup>b</sup> *Ward v. Turner*, 5 Dowl. 22.

<sup>c</sup> *Petrie v. Cullen*, 8 Sc. N. R. 705, 2 Dowl. & L. 604.

<sup>d</sup> 14 Mees. & W. 295, 3 Dowl. & L. 80.



v. *Lewis*, on the 7th June, and that in both of those cases,\* the court expressed its dissent from the doctrine laid down in *Petrie v. Cullen*, above cited.

#### SERVICE OF NOTICE TO PRODUCE, WHEN TOO LATE.

In an action by the indorsee against the acceptor of a bill of exchange,<sup>7</sup> when the defence was, that the acceptance was obtained by fraud, and the bill indorsed to the plaintiff without consideration, the defendant proved at the trial, that a notice to produce the bill was put into the letter box at the office of the plaintiff's attorney, at half-past eight o'clock on the evening before the trial. The plaintiff refused to produce the bill, and the question raised was, whether the defendant had such notice as would justify the court in admitting secondary evidence. The Chief Baron, who presided at the trial, ruled, that the notice was too late, and the plaintiff had a verdict.

The propriety of the decision come to at *nisi prius* was afterwards questioned, upon an application to the Court of Exchequer for a new trial, but the court determined that the notice to produce was served too late, and that secondary evidence was properly excluded.<sup>8</sup> It was thrown out by one of the learned barons, that it would be desirable if some rule could be established, that service of notice to produce after a certain hour should be deemed insufficient. In the absence of such a rule, however, each case must depend upon its particular circumstances. In this case the court would not say that if the bill had appeared to be lying before the attorney at the time he had notice to produce it, the notice might not have been

sufficient; but it did not appear whether the bill was in the client's or the attorney's possession, and under these circumstances, a notice served at half-past eight o'clock in the evening, to produce the bill at ten o'clock the next morning was not sufficient. Upon these grounds the rule for a new trial was discharged.

#### NEW RULES OF THE COMMON LAW COURTS.

FOR THE EXAMINATION OF PERSONS APPLYING TO BE ADMITTED AS ATTORNEYS.

*Easter Term, 1846.*

WHEREAS, by section 15 of the statute 6 & 7 Vict. c. 93, it was enacted,—"That it shall be lawful for the judges of the Courts of Queen's Bench, Common Pleas, and Exchequer, or any one or more of them, and he and they is and are hereby authorized and required before he or they shall issue a fiat for the admission of any person to be an attorney, to examine and inquire by such ways and means as he or they shall think proper touching the articles and service and the fitness and capacity of such person to act as an attorney; and if the judge or judges as aforesaid shall be satisfied by such examination, or by the certificate of such examiners as hereinafter mentioned that such person is duly qualified and fit and competent to act as an attorney; then and not otherwise the said judge or judges shall and he and they is and are hereby authorized and required to administer or cause to be administered to such person the oath hereinafter directed to be taken by attorneys and solicitors in addition to the oath of allegiance, and after such oaths taken to cause him to be admitted an attorney of such court;" and by section 16 of the said statute it was enacted, "For the purpose of facilitating the inquiry touching the due service under articles as aforesaid, and the fitness and capacity of any person to act as an attorney. That it shall be lawful for the judges of the Courts of Queen's Bench, Common Pleas, and Exchequer, (or any eight or more of them, of whom the chiefs of the said courts shall be three,) from time to time to nominate and appoint such persons to be examiners for the purposes aforesaid, and to make such rules and regulations for conducting such examination as such judges shall think proper." And whereas, in order to carry the said statute more fully into effect, it is expedient annually to appoint examiners, subject to the control of the judges in manner hereinafter mentioned. It is ordered that the several Masters for the time being for the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, together with *sixteen* attorneys or solicitors, be appointed by a rule of court in every year to be examiners for one year, any five of whom (one whereof to be one of the said Masters,) shall be competent to conduct the examination, and that subject to such appeal as hereinafter

\* See the note to *Lumley v. Dubourg*, 3 Dowl. & L. p. 83.

<sup>7</sup> *Lawrence v. Clark*, 14 Mees. & W. 250; 3 Dowl. & L. 87.

<sup>8</sup> On the part of the plaintiff, *Byrne v. Harvey*, (2 M. & Rob. 89,) where Lord Denman ruled, that a notice to produce a letter in a town cause, served at the office of the attorney at half-past seven o'clock on the evening before the trial, was too late, was cited; and for the defendant, *Gibbons v. Powell*, (9 Car. & P. 634,) where a notice to produce a copy of a writ of summons, served at the office of the defendant's attorney at eight o'clock in the evening, and held to be in time, was relied upon. *Atkins v. Meredith*, 4 Dowl. P. C. 658; *Holt v. Miers*, 9 Car. & P. 191; and *George v. Thompson*, 4 Dowl. P. C. 566, were also mentioned.

mentioned, no person who shall not have been previously admitted a solicitor of the High Court of Chancery shall be admitted to be sworn an attorney of any of the courts, except on production of a certificate signed by the major part of such examiners actually present at and conducting his examination, testifying his fitness and capacity to act as an attorney; such certificate to be in force only to the end of the term next but one following the date thereof, unless such time shall be specially extended by the order of a judge.

2. It is further ordered that the examiners so to be appointed shall conduct the said examinations under regulations to be first submitted to and approved by the judges.

3. And it is further ordered, that in case any person shall be dissatisfied with the refusal of the examiners to grant such certificate, he shall be at liberty to apply for admission by petition in writing to the judges, to be delivered to the clerk of the Lord Chief Justice of the Court of Queen's Bench, upon which no fee or gratuity shall be received: which application shall be heard in Serjeants' Inn Hall by not less than three of the judges.

4. And whereas the hall or building of the Incorporated Law Society of the United Kingdom, in Chancery Lane, will be a fit and convenient place for holding the said examinations, and the said society have consented to allow the same to be used for that purpose; it is further ordered, that until further order, such examinations be there held on such days as the said examiners, or any five of them, shall appoint; and that any person not previously admitted an attorney of any of the three courts, and desirous of being admitted, shall, in addition to the notices already required, give a term's notice to the said examiners of his intention to apply for examination, by leaving the same with the secretary of the said society, at their said hall; which notice shall also state his place or places of residence or service for the last preceding twelve months; and in case of application to be admitted, on a refusal of the certificate, shall give ten days' notice, to be served in like manner, of the day appointed for hearing the same.

5. And it is further ordered, that six days at the least before the commencement of the term next preceding that in which any person not before admitted shall propose to be admitted an attorney of either of the courts, he shall cause to be delivered at the Master's office, instead of affixing the same on the walls of the courts, the usual written notices which shall state, in addition to the particulars now required, his place or places of abode or service for the last preceding twelve months; and the master shall reduce all such notices as in this rule first mentioned into an alphabetical table or tables, under convenient heads, and affix the same, on the first day of term, in some conspicuous place within or near to and on the outside of each court. And such person shall also for the space of one full term, previous to the term in which he shall apply to be admit-

ted, enter or cause to entered in two books kept for that purpose, one at the chambers of the Lord Chief Justice of the court in which he applies to be admitted, and the other at the chambers of the other judges of such court, his name and place or places of abode, and also the name or names and place or places of abode of the attorney or attorneys to whom he shall have been articulated. And it is further ordered, that a printed copy of the list of admissions be stuck up in the Queen's Bench, Common Pleas, and Exchequer offices, and at the judges' hall or chambers of each court in Roll's Garden.

Denman.  
N. C. Tindal.  
Fred. Pollock.  
J. Parks.  
E. H. Alderson.  
J. Patteson.  
J. Williams.

T. Colman.  
R. M. Rolfe.  
Wm. Wightman.  
C. Cresswell.  
W. Erle.  
T. J. Platt.

#### REGULATIONS.

*Approved by the Judges in Easter Term, 1846,*

For the examination of persons applying to be admitted as attorneys of the Courts of Queen's Bench, Common Pleas, or Exchequer, pursuant to the rule of court made in Easter Term, 1846.

Whereas by a rule of the Courts of Queen's Bench, Common Pleas, and Exchequer, made in Easter Term, 1846, it was ordered, that the several Masters for the time being of the said courts respectively, together with sixteen attorneys or solicitors, should be appointed by a rule of court in every year to be examiners for one year, of persons applying to be admitted attorneys of the said courts, five of whom (one whereof to be one of the said masters) should be competent to conduct the examination, and that subject to such appeal as thereafter mentioned, no person not previously admitted a solicitor of the High Court of Chancery should be admitted to be sworn an attorney of any of the said courts, except on production of a certificate signed by the major part of such examiners actually present at and conducting his examination, testifying his fitness and capacity to act as an attorney; such certificate to be in force only to the end of the term next but one following the date thereof, unless such time should be specially extended by the order of a judge. And it was further ordered, that the examiners so to be appointed should conduct the said examinations under regulations to be first submitted to and approved by the judges; and that until further order such examinations should be held in the hall or building of the Incorporated Law Society of the United Kingdom, in Chancery Lane, on such days as the said examiners or any five of them should appoint; and that any person not previously admitted of any of the three courts, and desirous of being admitted, should give a term's notice of his intention to apply for examination, by leaving the same with the secretary of the said society at their said hall.

In pursuance of the said rule, the following regulations for conducting the said examinations have been submitted to and approved by the judges of the said courts.

1. That every person applying to be admitted an attorney of any of the said courts, pursuant to the said rules, shall within the first seven days of the term in which he is desirous of being admitted, leave or cause to be left with the secretary of the said Incorporated Law Society, his articles of clerkship duly stamped, and also any assignment which may have been made thereof, together with answers to the several questions hereunto annexed, signed by the applicant and also by the attorney or attorneys with whom he shall have served his clerkship.

2. That in case the applicant shall show sufficient cause, to the satisfaction of the examiners, why the first regulation cannot be fully complied with, it shall be in the power of the said examiners upon sufficient proof being given of the same, to dispense with any part of the first regulation that they may think fit and reasonable.

3. That every person applying for admission shall also, if required, sign or leave, or cause to be left with the secretary of the said society, answers in writing to such other written or printed questions as shall be proposed by the said examiners touching his said service and conduct, and shall also, if required, attend the said examiners personally for the purpose of giving further explanations touching the same; and shall also, if required, procure the attorney or attorneys with whom he shall have served his clerkship as aforesaid, to answer either personally or in writing any questions touching such service or conduct, or shall make proof to the satisfaction of the said examiners of his inability to procure the same.

4. That every person so applying shall also attend the said examiners at the hall of the said society, at such time or times as shall be appointed for that purpose, pursuant to the said rule as the said examiners shall appoint, and shall answer such questions as the said examiners shall then and there put to him by written or printed papers, touching the fitness and capacity to act as an attorney.

5. That upon compliance with the aforesaid regulations, and if the major part of the said examiners actually present at and conducting the said examination, (one of them being one of the said masters), shall be satisfied as to the fitness and capacity of the person so applying to act as an attorney, the said examiners so present, or the major part of them, shall certify the same under their hands in the following form, viz. :—

In pursuance of the rules made in Easter Term 1846, of the Courts of Queen's Bench, Common Pleas, and Exchequer, we being the major part of the examiners actually present at and conducting the examination of *A. B.* of &c. Do hereby certify that we have examined the said *A. B.* as required by the said rules, and we do testify that the said *A. B.* is fit and capable to act as an attorney of the said courts.

*Questions as to due service of articles of clerkship, to be answered by the clerk.*

1. What was your age on the date of your articles?

2. Have you served the whole term of your articles at the office where the attorney or attorneys, to whom you were articulated or assigned, carried on his or their business? and if not state the reason.

3. Have you at any time during the term of your articles been absent without the permission of the attorney or attorneys to whom you were articulated or assigned? and if so, state the length and occasions of such absence.

4. Have you during the period of your articles, been engaged or concerned in any profession, business, or employment, other than your professional employment as clerk to the attorney or attorneys to whom you were articulated or assigned?

5. Have you since the expiration of your articles been engaged or concerned, and for how long time, in any and what profession, trade, business or employment, other than the profession of an attorney or solicitor?

*To be answered by the attorney, agent, barrister, or special pleader with whom you may have served any part of your time under your articles.*

1. Has *A. B.* served the whole term of his articles at the office where you carry on your business? and if not, state the reason.

2. Has the said *A. B.* at any time during the term of his articles, been absent without your permission? and if so, state the length and occasions of such absence.

3. Has the said *A. B.* during the period of his articles been engaged or concerned in any profession, business, or employment, other than his professional employment as your articulated clerk?

4. Has the said *A. B.* during the whole term of his clerkship, with the exceptions above mentioned, been faithfully and diligently employed in your professional business of an attorney or solicitor?

5. Has the said *A. B.* since the expiration of his articles, been engaged or concerned, and for how long time in any and what profession, trade, business, or employment, other than the profession of an attorney or solicitor?

And I do hereby certify, that the said *A. B.* hath duly and faithfully served under his articles of clerkship (or assignment, as the case may be), bearing date, &c., for the term therein expressed, and that he is a fit and proper person to be admitted an attorney.

Denman.  
N. C. Tindal.  
Fred. Pollock.  
J. Parke.  
E. H. Alderson.  
J. Patteson.

J. Williams.  
T. Coltman.  
R. M. Rolfe.  
Wm. Wightman.  
C. Cresswell.

## NEW BILLS IN PARLIAMENT.

### COMPENSATING THE FAMILIES OF PERSONS KILLED BY ACCIDENTS.

No action at law is now maintainable against a person who by his wrongful act, neglect, or default may have caused the death of another person, and it is oftentimes right and expedient that the wrongdoer in such case should be answerable in damages for the injury so caused by him : for this reason, it is proposed to enact :

1. That whosoever any person shall by his wrongful act, neglect, or default have caused the death of another person, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action against such first-mentioned person in any of her Majesty's courts of record at Westminster, and recover damages in respect thereof, then and in every such case the person so causing such death shall be liable to an action for damages resulting therefrom, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to the offence of manslaughter.

2. That every such action shall be for the sole benefit of such person or persons as are entitled to the personal effects of the deceased ; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties for whom and for whose benefit the action shall be brought : Provided always, that all such actions shall be brought and proceeded in and damages recovered in the same way and manner as if the deceased party himself had brought it, and shall be brought by the executor or administrator of such deceased person, and he or she shall be compelled to proceed, upon application of the person so entitled or any of them, and on being indemnified for costs ; and that in case there shall be no executor or administrator, then any of the parties entitled as aforesaid shall be at liberty to proceed in bringing and prosecuting such action as aforesaid ; and in either case the damages recovered shall be considered as part of the personal estate of the deceased, and paid and divided accordingly ; and that every plaintiff in whose favour a verdict shall be given in any action under this act shall be entitled to his full costs of suit, unless the damages found by the jury shall be less than 40s.

3. That not more than one action shall lie for and in respect of the same subject matter of complaint ; and if two or more actions in respect thereof shall at any time be brought, it shall be lawful for the court or a judge to order that the same be consolidated, and also to direct in whose name the action, after consolidation, shall proceed, as well as to make such other orders therein as to them or him shall seem fit.

4. That in every such action the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his

attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

## SCOTTISH MERCANTILE LAW AND PRACTICE.

### No. 7.

I. Caution in the application of English procedure in Scotland.

II. English Warrants of Seizure indorsed in Scotland.

III. Principles of the Administration of Scottish Bankruptcies.

1. Administration how controlled.

2. Means open for defrauding distant Creditors.

3. Means of protection against such Frauds.

### I. CAUTION IN THE APPLICATION OF ENGLISH PROCEDURE IN SCOTLAND.

IN the two papers which precede this, we have directed attention to some points, in which, by the force of statute, those who are in the administration of English estates, bankrupt or insolvent, possess the right and power of operating in certain ways upon Scottish property, and claims in which the English estate is interested. And in the leading instances explained, the statutes give to the English administrators, and to the English courts, the power of vindicating such claims in Scotland directly, without the intervention of the Scottish courts of law.

It is important that those having interests in Scotland, should keep steadily in view the rights which thus belong to them.

But, on the other hand, dangerous mistakes may occur, unless care is taken to understand distinctly, and watch sedulously, the limits by which such rights are circumscribed.

In the first place, due caution must be used, even in taking those formal steps which are prescribed by the statutes lately alluded to.

In the second place, there are certain cases in which English men of business interested in English bankruptcies and insolvencies, must guard against causing any steps whatever to be taken against Scottish property, without the intervention of Scottish decrees or warrants ; These are cases where the rights of the English creditors may indeed be successfully asserted, but where the intervention of the Scottish courts (either as judges of the merits, or as bound to interpose their authority as a matter of form,) is by law distinctly and peremptorily required. We have had knowledge of one instance, in which an unauthorised interference on the part of English creditors with the Scottish property of a person who became bankrupt in England, cost them a sum of fifteen hundred pounds, as a compensation for damages.

For this reason, then, that the mistake is sometimes easily committed, and also to guard against the risk of having it supposed, that the

English bankruptcy laws give greater powers over Scottish property, than they really do, it is thought right to direct attention to one particular limitation as an example.

## II. ENGLISH WARRANTS OF SEIZURE INDORSED IN SCOTLAND.

The "Act to amend the Laws relating to Bankrupts," (6 Geo. 4, c. 16,) contains a section, No. 30, which is in the following terms:—"And be it enacted, that if, in the execution of any warrant of seizure so granted by the commissioners as aforesaid, it shall be necessary to break open any house, chamber, shop, warehouse, door, trunk, or chest of such bankrupt in Scotland, where any of the property of such bankrupt shall be reputed to be, or to seize and get possession of such property, such warrant, after having been verified upon oath as aforesaid, may be backed or indorsed with the name of a judge ordinary or justice of the peace in Scotland, who are hereby required, within their respective jurisdictions, to back or indorse the same; and such warrant so indorsed, shall be sufficient authority to the person bringing such warrant, and to all officers of law in Scotland, to execute the same, within the county or borough where it is so indorsed, and in virtue thereof to break open the house, chamber, shop, warehouse, door trunk, or chest of such bankrupt, and to seize and take possession of such property, to be distributed under the said commission, or otherwise dealt with according to law."

It does not require any comment to show either the importance of this section or the manner of its operation. (1) The English warrant of seizure is not inoperative upon property of the bankrupt lying in Scotland. But (2) the warrant cannot lawfully be acted upon in Scotland, until it has received the indorsement of a Scottish sheriff or justice of the peace. And (3) these Scottish magistrates are required and bound to indorse the warrant when exhibited to them.

## III. PRINCIPLES OF THE ADMINISTRATION OF SCOTTISH BANKRUPTCIES.

### 1. Administration how controlled.

It can hardly be necessary for the information of the professional reader, to state that the purposes served in England by a fiat in bankruptcy, are substantially served in Scotland by what is called a sequestration.

The proceedings in Scottish bankruptcy, under the process bearing the name of sequestration, have of late years received improvements of the most valuable kind. Still the Scottish Bankrupt Statute has left room for improvement. And, further, there are adopted in it, and incorporated with the whole law of Scotland in regard to bankruptcy, certain principles which, to a greater or less extent, differ from those of the English law,—principles likewise which affect the practical administration of bankrupt estates in Scotland, to an extent and in a manner making it highly desirable that English practitioners connected with Scottish

interests, should be distinctly aware of the differences and of the effects they lead to.

The result of the Scottish sequestration, as of the English fiat, is to bring the bankruptcy under the control and direction of the courts of law. In Scotland, not less than in England, everything done in the administration of the bankrupt's estate, is liable to be reviewed by the courts. But, the two systems are not by any means alike in the provisions they make for calling the interposition of the courts into action.

The main feature of difference lies in this fact, that there are in Scotland no offices corresponding to the English official assignees. It is the principle of the Scottish law, that the creditors themselves are sufficient for their own protection; that, in all ordinary circumstances, the bankruptcy shall be left to the administration of them, or of persons named by them; that no official party shall interfere with that administration, or take any part in it, so long as it is unobjected to by the creditors or the bankrupt himself; and that, in a word, it is only upon the application of creditors or of the bankrupt that the court shall interfere to do anything further than formally interposing their authority to acts performed without their knowledge.

The administration of a Scottish bankrupt estate is lodged, under a sequestration, in the hands of a trustee chosen by the creditors, and ofteneest a creditor himself. The English practitioner will most easily understand the duties and responsibilities of this most important officer, if he conceives him as being, in a good many respects, the same with an assignee chosen by the creditors in an English bankruptcy, but as likewise occupying in some particulars, the position of the official assignee, and as even exercising some of the most important judicial functions of the learned commissioners of the English court of bankruptcy. In order that time may be allowed for making a proper choice of a trustee, and that yet no injury may arise from the delay, the creditors are entitled, at a meeting called within fourteen days after the issuing of the sequestration, to elect an interim factor; but the duties of this officer, though often important for the preservation of property, are but temporary. A greatly more momentous step, which takes place at an interval of not less than four, nor more than six weeks from the date of the sequestration, is the meeting of the creditors to elect the trustee. The trustee thus elected is the manager of the estate for the creditors; in his person too, (official assignees not being known in Scotland,) the bankrupt's property is vested, and to him all monies and other proceeds of the property are paid; but he has likewise extensive powers of a judicial nature, corresponding in fact with those of the learned English commissioners in bankruptcy; for it is the duty of the trustee to examine the claims of creditors,—to judge of their admissibility, to rank the preferences, and to make all ready for payment of a dividend. In the performance of all his duties, the trustee is directly responsible

to the courts before whom his official acts may be brought up for review by creditors complaining either of a particular decision he may have given, or of his conduct generally; while three-fourths of the creditors in number and value are entitled to remove him from his office at their mere pleasure. Over the trustee's acts a system of superintendence and advice is exercised by a committee of three creditors, (chosen, as he is, by the creditors themselves,) the members of which committee are called by the title of *commissioners*. The title given to these officers may tend to lead into mistake. They have nothing whatever in common with the English commissioners of bankruptcy. The Scottish commissioners are just a committee of creditors, (or of persons holding mandates from creditors,) whom the general body of the creditors elect for the purpose of watching over the proceedings of the trustee,—for assisting and advising him,—for concurring with him in certain matters of form,—and for determining on some particular questions, such as the propriety of paying or postponing a dividend. Three commissioners are appointed for each bankrupt estate.

If the trustee and the commissioners discharge faithfully and actively their duty to the creditors at large, all is well. If they do not, it is left to individual creditors to complain of them and procure a remedy. If individual creditors pay no attention to the bankruptcy, the trustee and commissioners may deal with it as they please. If the commissioners are supine, the trustee may exercise the same prerogative.

In brief, the whole system, excellent and efficient where the creditors are on the spot and watchful, holds out means of taking no inconsiderable advantage of creditors who are either careless of their own interests or too far distant to watch over them with exactness.

## 2. Means open for defrauding distant creditors.

It may be useful to describe some of the ways in which the Scottish bankruptcy laws may facilitate the practice of acts injurious to the interests of creditors who are careless or who live at a distance.

### 1st, *The administration of the estate may be put into improper hands.*

The trustee and commissioners are appointed by such qualified creditors as are present at a meeting called for the purpose. If the *bond fide* creditors are not present at that meeting, either personally or by authorised mandatories, the trustee and commissioners may be, and sometimes are, selected from among the bankrupt's friends; at all events they may be persons inactive and otherwise unqualified. Now, be it observed, the trustee and commissioners not only exercise the functions of ordinary administration, but have the power of selling the bankrupt's property, at such prices and to such persons as they please. When the administration of a bankruptcy falls into the hands of parties having an interest adverse to that of the body of the creditors, they of course transact sales to

suit their own purposes. It is to be feared that the experience of many of our professional readers must have presented instances in which property that ought to have been divided among the creditors, has in some such way as this been collusively carried off by the bankrupt and his friends. Still oftener must it have happened that the trustee and commissioners, though not dishonest, have been inactive, careless, or otherwise incompetent; and that from this cause losses have arisen as bad as those caused by positive dishonesty.

### 2nd, *Fraudulent compositions may be carried through.*

At a meeting for electing the trustee, which takes place four weeks after the Gazette notice, the bankrupt and his friends may, (if not watched,) smuggle in an offer of a composition not amounting to a tenth part of the true assets; and at the third meeting, which takes place four weeks later, they may, and sometimes do, procure an approval and acceptance of such fraudulent offers. The bankrupt will thereupon procure his discharge; and the whole property may thus be disposed of, and all redress cut off, before creditors at a distance would, in ordinary circumstances, have had time to do more than barely learn the fact of the bankruptcy. It may be observed, also, that such attempts at fraudulent composition are usually of a piece in all their parts. The sureties for the composition are often men of straw; and the consequence is, a total loss to the unsuspecting creditors.

### 3rd, *The Bankrupt may obtain his discharge fraudulently without any composition.*

Within eight weeks after the Gazette notice, the bankrupt may, (provided no other person than his friends have lodged claims,) attend the meeting then held, and obtain the written consent of these friends to his getting his discharge (or certificate) without any composition. Within four weeks after receiving such consent, he may have obtained his discharge, and set his *bond fide* creditors at defiance. In more than one such case it has proved, that the bankrupt had previously made over property to his friends, to remain with them in trust till the discharge should have been obtained. Thus, as in the case of a fraudulent composition, the bankrupt may be in better circumstances after his bankruptcy than before it.

## 3. Means of Protection against such Frauds.

It would be a task alike disagreeable and unprofitable to attempt describing in detail, either any of the innumerable ways in which the *bond fide* creditors may be injured through mere incompetency or supineness on the part of the administrators of the bankrupt estate; or any of those manoeuvres such as the manufacture of fictitious claims, and the conclusion of fraudulent agreements which a dishonest bankrupt and his confidential friends may put in operation wilfully for the purpose of defeating the just claims that lie against the debtor's property.

Suffice it to say that protection against such

fraudulent practices may in general be found in following this advice.—Immediately on the occurrence of a Scottish bankruptcy, let affidavits of debt, with mandates to attend all the meetings, be transmitted to some active and trustworthy person on the spot. If this be neglected, the creditor will often be seriously a loser. If attended to, he will usually have it in his power to defeat all attempts to defraud him.

[As much of the practical information in this paper is not to be found in the books, it may be proper to mention, that we have been assisted in preparing it, (as in the former papers on Scottish Law and Practice,) by the experience of Mr. Gilmour, of Quality Court, Chancery Lane, a Solicitor of the Supreme Court in Scotland.]

### PERIODICAL NOTICES OF NEW BOOKS.

IN addition to the Reviews which will be continued with more or less fulness of detail and observation, we purpose giving a periodical list of New Law Works, classed under their appropriate heads,—whereby our readers will perceive the sources of information and means of assistance which from time to time are proffered for their assistance amidst the changes with which they are still doomed to keep pace.

#### PARLIAMENTARY PRACTICE.

A Treatise on the Practice of Committees of the House of Commons, with reference especially to Private Bills. By Charles Frere, Esq., Barrister at Law, and one of the Clerks in the Office of the Chief Clerk of the House of Commons. J. Bigg & son, 1846. Pp. 97.

#### PRACTICE OF THE COURTS.

The Practice of the High Court of Chancery, by Edmund Robert Daniel, F. R. S., a Commissioner of the Court of Bankruptcy. Second Edition, with Considerable Alterations and Additions, adapting the text to the last General Orders and the most Recent Decisions of the Court. By Thomas Emerson Headlam, M. A., Barrister at Law. In 2 vols. Stevens and Norton, 1846. Pp. 1896, xciv.

The New Chancery Practice, comprising all the Alterations effected by the New Orders 8th May, 1845, with Practical Directions, a full Selection of the Modern Cases, (including the Decisions upon the New Orders,) and an Appendix of Forms. By Herbert Ayckbourn. Second Edition, Enlarged and carefully Revised. By Thomas H. Ayckbourn, Esq., Barrister at Law, and Hubert Ayckbourn. Butterworth, 1846 Pp. 490, 152, xix.

The Law of Inferior Courts for the Recovery of Debts. By Joseph Moseley, Esq., Barrister at Law. Stevens and Norton, 1845. Pp. 528.

#### CONVEYANCING.

The Practice of Conveyancing, comprising every usual Deed Analytically and Synthetically Arranged. By James Stewart, Esq., of Lincoln's Inn, Barrister at Law. Third Edition, Corrected and Enlarged, including Precedents under the Copyhold Enfranchisement Act 4 & 5 Vict. c. 35, and the Conveyancing Acts of 1845. By James Stewart, of Lincoln's Inn, Barrister at Law, and Harris Prendergast, Esq., of Lincoln's Inn, Barrister at Law. Vol. 1., Part 1. W. Benning & Co., 1846. Pp. 475, xxvi., xxxix., 59.

Precedents of Conveyances and other Instruments relating to the Transfer of Land to Railway Companies, with Introductory Matter and Explanatory Notes. By Henry Tyrwhitt Frend and T. Hibbert Ware, Barristers at Law. C. Reader, 1846. Pp. 452.

#### PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

Parish Settlements and the Practice of Appeals, containing the Law and Evidence of each Class of Settlement, and the Grounds of Objection incidental to them; with the Law and New Statutes relating to Bastards, and Forms for all Proceedings. By Jelinger C. Symons, Esq., Barrister at Law. Blenkarn, 1846. Pp. 326, xlv., 64.

The Bench Formulist, being a Directory to the Forms of Instruments and Processes used by Justices of the Peace out of Sessions. Chas. Knight & Co. 1846. Pp. 530, xxvii.

An Analytical Digest of the Statutes and Cases relating to the Practice of Appeals against Orders of Removal, arranged on the principle of "Comyns' Digest." By Henry John Hodgson, Esq., Barrister at Law. Stevens and Norton, 1845. Pp. 174, xxxi.

#### LAW OF PATENTS.

A Treatise on the Law relating to Patent Privileges for the Sole Use of Inventions, and the Practice of Obtaining Letters Patent for Inventions, with an Appendix of Statutes, Rules, Forms, &c. By W. M. Hindmarch, Esq., Barrister at Law. Stevens and Norton, 1846. Pp. 807, xxviii.

#### INCLOSURE OF COMMONS.

The Act for the Inclosure of Commons in England and Wales, with a Treatise on the Law of Rights of Commons in reference to this Act, and Forms as settled by the Commissioners, &c. By Geo. Wingrove Cooke, Esq., Barrister at Law. Owen Richards, 1846. Pp. 331.

#### LAW OF INSURANCE.

The Law of Fire and Life Insurance, with the Latest Decisions, and an Appendix containing Tables for Three Lives, Tables for Benefit Clubs, and other Practical Rules and

Tables. By George D. B. Beaumont, Esq., Barrister at Law. Second Edition. Stevens and Norton, 1846. Pp. 90, xx.

**LAW OF ACTIONS.**

A Practical Treatise on the Law of Actions, with Forms, Tables, Statutes, and Cases and Directions to Auctioneers. By Joseph Bateman, LL. D., of Lincoln's Inn. Third Edition, adapted to the recent alterations in the Law. Maxwell and Son, 1846. Pp. 358, xxiv.

**CRIMINAL LAW.**

Observations on the Eighth Report of the Commissioners on Criminal Law. By Geo. E. Williams. Stephens and Norton, 1846. Pp. 58.

**INTERNATIONAL LAW.**

The Oregon Question, determined by the Rules of International Law. By Edward J. Wallace, M. A., Barrister at Law, Bombay. Maxwell and Son, 1846. Pp. 39.

**ATTORNEYS TO BE ADMITTED,**

*Trinity Term, 1846.*

*Queen's Bench.*

*Clerks' Names and Residences.*

*To whom Articled, Assigned, &c.*

Adams, Henry, Rydon House; Stoke Gabriel; and Weston Street	Charles Michelmores, Totness
Anderson, Weir, 1, Stafford Place, Pimlico; and Liverpool	George Hensman, 8, Basing Lane
Adams, Richard, Walsall	Charles Bardswell, Liverpool
Ashley, William Edward, 8, Elizabeth Street, Brompton; Newark-upon-Trent; and Brompton Terrace	Samuel Smith, Walsall
Burton, William, 52, Gloucester Street, Queen Square; and Manchester	John Would Lee, Newark
Barton, Samuel Milner, 52, Gloucester Street; and Didsbury	Richard M. Whitlow, Manchester
Bowes, Richard, 11, Serjeant's Inn, Fleet St.; and Southwick	Thomas Higson, Manchester
Biddles, John Henry, 2, Portland Place, Cambridge	Robert Brown, Sunderland
Briggs, John Adolphus, 2, Arlington Street, Piccadilly	Edward Barron, 29, Bloomsbury Square
Bouts, Charles, 9, Rodney Buildings, New Kent Road	Thomas Briggs, Lincoln's Inn Fields
Blackburn, Samuel Render, Leeds	Frederick Bowker, Winchester
Bloodworth, Henry, 43, Southampton Buildings; and Kimbolton	John Blackburn, Leeds
Brown, Thomas Augustus, 16, Blandford Street, Portman Square; and Tonbridge	Thomas Scriven, Northampton
Bramwell, Thomas Vicars, 37, Brompton Row, Brompton; and Smith Street, Chelsea	William Hartcup, Bungay
Brock, Benjamin jun., 16, Featherstone Buildings; and Cecil Street	William Woollam, Stockport
Batt, Henry, 4, City Terrace, City Road; Windsor Terrace, City Road	William Jones, Carmarthen
	Robert Medcalf, Lincoln's Inn Fields
	Joseph Woodcock, Lincoln's Inn Fields
	John Coles Fourdrinier, Scott's Yard, Bush Lane
	Beaumont C. Luttley, Dyers' Hall and Wandsworth
Burrell, Peter Charles, Clement's Inn; Middleton Road, Kingsland; and Cranmer Road	Peter Ashwell Burrell, White Hart Court
Berry, Josiah, Truro	Simon Adams Beck, Ironmongers' Hall
Barret, Joseph Morton, Otley, Yorkshire	Francis Braithwaite, Truro
Bramall, Henry J. Marmion, 7, Pantom Square	Edward Barret, Otley
Birch, Henry, 13, Church Street, Millbank	Thomas Brook B. Stevens, Tamworth
Baldwin, Alexander, Clithero; and Settle	Nathaniel Stevens, Gray's Inn Square
Bowiby, Thomas William, 32, Lincoln's Inn Fields; and Albany Street	Isaac Last, Hadleigh
Clarke, William, 1, Pavia Place, Dalston	William Foster, Settle
Chadwick, John Nuree, 3, Queen's Square; and King's Lynn	R. Bowby, Bishop Wearmouth
	Thomas Tilson, Coleman Street
	Boys R. Aldham, King's Lynn



- Chilwell, George, 60, Great Portland Street ;  
 and Warwick . . . . . Charles Handley, Warwick  
 Cowdry, Nathaniel, 9, Carlton Villas ; and  
 52, Burton Crescent . . . . . Charles Bayly, Frome, Selwood  
 Cheesman, John Goodger, Brighton . . . . . Charles Clarke, Lincoln's Inn Fields  
 . . . . . George Dempster, Brighton  
 . . . . . Charles Chalk, Brighton  
 Chew, Thomas Heath, Manchester . . . . . William Christopher Chew, Manchester  
 Clayton, Haviland, Percy Street, Bedford  
 Square . . . . . Henry Brayley Wedlake, King's Bench Walk  
 Coode, Edward, jun., 37, Queen Square ; and  
 St. Austell . . . . . Edward Coode, St. Austell  
 Cockle, Henry, Deptford . . . . . John Sandom, Deptford  
 . . . . . Williams Sandom, Deptford  
 Cross, Thomas Plomer Lewis, 28, Surrey St.,  
 Strand ; and Barne's Terrace . . . . . William Henry Cross, Surrey Street  
 Clark, George Haines, 28, Finsbury Place . . . . . George Clark, Finsbury Place  
 Church, Henry Francis, 9, Bedford Row . . . . . John Thomas Church, Bedford Row  
 Channing, Henry, 4, Featherstone Buildings ;  
 and Taunton . . . . . R. U. Bullen, late of Taunton  
 . . . . . G. Mathias, Taunton  
 Dacie, William, 3, Foxley Place, Camberwell  
 New Road . . . . . W. S. Dacie, Throgmorton Street  
 . . . . . Sir G. Stephen, Furnival's Inn  
 Dransfield, William, 32, Charlotte Terrace,  
 Islington ; and Huddersfield . . . . . Daniel C. Batty, Huddersfield  
 Dendy, Samuel Frederick, 16, Montague St.,  
 Russell Square . . . . . Samuel Dendy, 3, Bream's Buildings  
 Dashwood, Thomas, jun., 24, Upper Eaton  
 Street, Belgrave Square ; Coleshill Street ;  
 and Sturminster, Newton Castle . . . . . Thomas Dashwood, sen., Sturminster, Newton  
 . . . . . Castle  
 . . . . . W. Dean, Guildford Street  
 Dickinson, W. Henry Allen, 5, Storey's Gate,  
 Westminster . . . . . W. H. Allen, Clifford's Inn  
 Dodd, Henry, The Riding near Hexham ; 7,  
 King Street, Cheapside ; 4, New Milman  
 Street ; and 7, Wakefield Street, Brun-  
 swick Square . . . . . Richard Gibson, Hexham  
 Deere, John Morgan, 2, Frederick Place,  
 Gray's Inn Road . . . . . A. S. Crowdy, Swindon  
 . . . . . W. H. Smith, Bedford Row  
 Dale, Robert, York . . . . . Williams Smith, jun., York  
 . . . . . William Gray, York  
 Duffield, William Ward, 9, Felix Terrace,  
 Liverpool Road ; and Great Baddow . . . . . Edward Swinborne Chalk, Chelmsford  
 Driffield, Charles Edward, 53, Frederick Street,  
 Gray's Inn Road . . . . . W. Wren Driffield, Prescott  
 Dixon, Edward Adolphus, 54, Bernard Street,  
 Russell Square ; and Oxford . . . . . Percival Walsh, jun., Oxford  
 . . . . . Gordon Dayman, Oxford  
 Desborough, Lawrence, jun., Grove Hill,  
 Camberwell . . . . . L. Desborough, Sise Lane  
 Dawbarn, Robert, jun., 15, Alfred Street, Bed-  
 ford Square ; and Wisbeach, St. Peter . . . . . Edward Jackson, Wisbeach  
 Dean, John Joseph, 16, Essex Street, Strand . . . . . William Dean, Essex Street  
 Dry, James, 1, Howard Street, Strand ; and  
 Notting Hill Square . . . . . R. F. Graham, Newbury  
 . . . . . George Leeman, York  
 Elders, Thomas William, York . . . . .  
 Evans, Robert, 20, Myddelton Street, North  
 Everton near Liverpool ; and Birkenhead . . . . . David Evans, Liverpool  
 England, Charles, 16, Marchmont Street ;  
 and Wisbeach . . . . . Charles Metcalf, jun., Wisbeach St. Peter  
 Fleetwood, Thomas Perrior, 1, Queen Square,  
 Bloomsbury . . . . . Henry Everett, Salisbury  
 . . . . . G. B. Townsend, Salisbury  
 Frankish, William, 15, New Ormond Street,  
 and Kingston-upon-Hull . . . . . Samuel Lightfoot, Kingston-upon-Hull  
 Faithfull, Edward Williams, Winchester ; and  
 5, King's Road, Bedford Row . . . . . Edward C. Faithfull, Winchester  
 Falkner, John Stringer, 13, Camden Terrace,  
 Camden Town ; Bath ; and Lothbury . . . . . Francis Falkner, Bath  
 Fowler, James, Birche Green, Birmingham ;  
 and Great Ormond Street . . . . . G. Paulson Wragge, Birmingham

## RESULT OF EASTER TERM EXAMINATION.

THE printed list of persons applying for admission on the Roll of Attorneys and Solicitors this term comprised 150, but this number included several who had been previously examined, and there remained 127 to be examined. Of these 103 only produced satisfactory testimonials, and on the day of examination, the 30th April, three more were absent, so that the number was exactly 100.

Sir Archer Denman Croft, Bart., presided; and the other examiners were Mr. Lawford, Mr. Bayley, Mr. Kinderley, and Mr. Grant.

The examination proceeded as usual, from 10 o'clock till past six; and the examiners met the next day soon after 9 o'clock, and at one the result was declared to be 93 passed and 7 postponed.

### TRINITY TERM EXAMINATION.

The examination for next term will take place on Thursday, the 4th June. The testimonials are to be left on the 28th instant.

## ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS,

From 1st February, 1846.

### Bankruptcy.

[The only "regular" reports in the Court of Review for several months being those of Mr. De Gex, just published, we have digested them immediately, and included our own reports in the Court of Bankruptcy.]

#### AFFIDAVIT.

*Stat. 1 & 2 Vict. c. 110, s. 8.*—A commissioner has no authority to order an affidavit of debt, filed under the *stat. 1 & 2 Vict. c. 110, s. 8*, to be taken off the file, although such affidavit should be obviously imperfect and insufficient. *Ex parte Taylor*, 31 L. O. 536

#### ANNULLING FIAT.

1. *Petition of bankrupt before surrender.*—*Insolvent Act.*—Non surrender by the bankrupt is no objection to his petition to annul the fiat, if the petition be presented before the time for surrendering has expired.

The circumstances that the bankrupt has taken the benefit of the Insolvent Debtors' Act, and that the petitioning creditor's debt was included in the schedule, held insufficient grounds for annulling the fiat. *Ex parte Garnett*, in *re Garnett*, 1 De Gex, 95.

2. *Office fees of 10l. and 20l. not paid.*—On a petition of the bankrupt, with the consent of all the creditors who had proved, to annul the fiat, the commissioner refused to sign the requisite certificate, unless the fees of 20l. and 10l. payable under 1 & 2 Will. 4, c. 56, ss. 46 and 55, were paid. There were no assets. The fiat was ordered to be annulled on the registrar being satisfied of the concurrence of creditors. *Ex parte Diamond*, in *re Diamond*, 1 De Gex, 143.

3. *Office fees of 10l. and 20l. not paid.*—What a sitting for choice of assignees, as to office fee of 1l.—A meeting and an adjourned meeting was held for the choice of assignees, but none are chosen. *Held*, that the payment of 1l. directed by the 1 & 2 W. 4, c. 56, s. 55, to be made for every sitting for the choice of assignees, &c. was not due on either of the above sittings.

On the bankrupt petitioning to annul the fiat with the consent of the creditors, and the commissioners refusing to sign the usual certificate until the above fees, and the fees of 20l. and 10l. payable under the same act (ss. 46 and 55) were paid: *Held*, that the fiat ought to be annulled on payment out of the fund realised of the expenses, and a proper remuneration of the official assignee, to be ascertained by the commissioner. *Ex parte Miller*, in *re Miller*, 1 De Gex, 144.

#### APPEAL.

*Court of Review.*—On an application by an insolvent for a final order, under 7 & 8 Vict. c. 96, s. 6, the commissioner remanded the insolvent, (who had previously been discharged under the act,) on the ground of his having recently petitioned the Insolvent Debtors' Court, and that proceedings were pending there: *Held*, that there was no appeal to the Court of Review from this order. *Ex parte Newlands*, in *re Newlands*, 1 De Gex, 150.

See *Contempt*, 2.

#### ASSIGNEES, CHOICE OF.

*Trustee proving against co-trustee cannot vote.*

—Where one of several trustees of a charitable society became bankrupt, and his co-trustees tendered a proof for the amount due from him to the charity, and on the commissioner refusing to admit the proof without an order of the court, an order was obtained, and the debt proved by the co-trustees in pursuance thereof: *Held*, that the co-trustees were not creditors entitled to vote at the choice of a creditors' assignee, and they, having been the only persons voting, the choice was set aside, and a new one directed. *Ex parte Rowe*, in *re Rowe*, 1 De Gex, 111.

Cases cited in the judgment: *Ex parte Shaw*, 1 G. & J. 151.

See *Annuling Fiat*, 3.

#### ATTESTATION OF INSOLVENT'S PETITION.

*Semble*, that the person attesting the signature of an insolvent to a petition under the *stat. 7 & 8 Vict. c. 96*, need not be an attorney or solicitor of the Court of Bankruptcy. *In re Bell*, 31 L. O. 463.

#### BANKER.

*Bills of exchange deposited, whether distinct debts.*—A customer pays in bills of exchange to his bankers and becomes bankrupt. The bankers prove for the whole balance due from him, and afterwards some of the bills of exchange paid in are paid in full by other parties liable, some before and some after the dividend is declared: *Held*, that the proof ought to be reduced by the amount of the paid bills and the

dividends refunded. *Ex parte Hornby, in re Prichard*, 1 De Gex, 69. See *Ex parte Barrett*, 1 G. & J. 327.

#### BILLS OF EXCHANGE.

See *Banker*.

#### BOND.

*Semble*, That the commissioner will not refuse to approve of a bond, entered into by a debtor and sureties, under 1 & 2 Vict. c. 110, s. 8, because no more than two days' notice was given to the town agent of the intention to submit the bond and sureties for approval. *In re Robinson*, 31 L. O. 442.

#### CLERK'S SALARY.

A trader borrowed 550*l.* under an agreement by which the lender was to become his clerk at a salary of 222*l.* 10*s.* a-year. The trader agreed to produce his accounts and balance sheet to the lender, who was to get in the debts, and alone to draw cheques on the banking account. If the balance was in the trader's favour at any time, he might draw to the amount of it. On payment of the loan, or on proceedings being taken to recover it, the agreement was to be at an end. The lender was to have the option of becoming a partner. On the trader becoming a bankrupt, *Held*—

1st, That the lender was a clerk entitled to payment of three months' salary in full.

2ndly, That the circumstance of the clerk having been absent from business owing to ill health for the three months immediately preceding the bankruptcy, with the bankrupt's sanction, did not take away this right. *Ex parte Harris, in re Closson*, 1 De Gex, 165.

#### CONSENT TO ADVERTISEMENT.

*No acquiescence in fiat.*—Consent by bankrupt to the insertion of the advertisement forthwith, held no acquiescence in the validity of the fiat. *Ex parte Gould, in re Gould*, 1 De Gex, 29.

#### CONTEMPT.

1. *Jurisdiction of Court of Review to issue an injunction.*—The Court of Review has jurisdiction to restrain a party committed by it for contempt from questioning, in an action at law, the regularity, propriety, or form of the order of committal. *Ex parte Turner, in re Martin*, 1 De Gex, 30; S. C. 3 M. D. & De G. 551.

Cases cited in the judgment: *Brass Crosby's case*, 3 Wils. 204; *Burdett v. Abbot*, 14 East, 1; *Stockdale v. Hansard*, 9 Adol. & Ellis, 1; *In re Sheriff of Middlesex*, 11 Adol. & Ellis, 273; *Almon's case*, Wilmet's opinions and judgments, 255; *Bailey v. Devereux*, 1 Vern. 269; 1 J. & W. 660, n.; *May v. Hook*, 1 Dick, 619; 1 J. & W. 663; *Frowd v. Lawrence*, 1 J. & W. 665; *Green v. Wilkins*, mentioned in *Aston v. Heron*, 2 M. & K. 391; *Charlie v. Pickering*, 1 Keen, 751.

2. *Commitment for contempt.*—Whether subject of appeal.—Appeal by petition.—Acquiescence in commitment.—Form of order of commitment.—Injunction.—1st, *Quare*, whether a commitment by the Court of Review for contempt can be the subject of appeal.

2nd, An appeal from a series of orders of the Court of Review permitted, under the circumstances, to be by way of petition.

3rd, An apology and petition to be discharged from custody and other proceedings by a party committed for contempt under the order of commitment and the consequential orders, held, not to preclude the party committed from disputing the validity of the commitment.

4th, An order of commitment should contain an express adjudication that a contempt has been committed.

5th, Where such an order recites the petition on which it is made, and refers to a printed paper as being set out in the schedule to the petition, and then recites that the schedule to the petition is in the words and figures following, and sets out the printed paper, and then orders the party to be committed for his contempt in printing and publishing the aforesaid printed paper so set out as aforesaid in the said schedule to the said petition, *quare*, whether the order contains a sufficient adjudication that a contempt has been committed?

6th, The circulation of a libel on the court relating to a matter disposed of by an order still in minutes, is a contempt for which the court may commit.

7th, One judge of the Court of Review sitting as the court may commit for contempt.

8th, In an action for the imprisonment under the commitment, the order is pleaded, and the plaintiff demurs, held, that an injunction ought not to issue limiting the plaintiff as to the particulars in respect of which he might, on such demurrer, question the validity of the order. *Ex parte Van Sandau, in re Martin*, 1 De Gex, 55.

Cases cited in the judgment: *In re the General Evening Post*, 2 Atkins, 469; *Green v. Elgie*, 8 Jurist, 188.

#### CONTINGENT DEBT.

*Contract.*—A father bequeaths his business and stock in trade to his sons, with a declaration that a grandson, then an infant, should be admitted into the firm on attaining 21, or in default thereof, that the sons, or the survivor of them, should pay the grandson 1,000*l.* on his attaining 21. On the bankruptcy of the surviving son before the grandson attained 21, held, that there was a right of proof for the 1,000*l.* as a contingent debt. *Ex parte Megarey, in re Megarey*, 1 De Gex, 167.

Cases cited in the judgment: *In re Murphy*, 1 Sob. & Lef. 144; *Ex parte Cooke*, 8 Ves. 353.

#### COUNSEL.

Practice as to hearing counsel in opposition to a bankrupt's certificate, and summing up the evidence. *In re Hutchinson*, 31 L. O. 296.

#### DEFENCE.

*Costs.*—A trader filing an affidavit of a good defence to a creditor's demand, under the 5 & 6 Vict. c. 122, s. 12, is entitled to have the summons discharged with costs. *In re Fearn*, 31 L. O. 466.

**EARNINGS OF UNCERTIFICATED BANKRUPT.**

On a petition for the appointment of a new trustee in the place of the bankrupt, and that the new trustee might use the bankrupt's name in certain proceedings, the petitioner was ordered to pay the costs of the bankrupt and the assignees to them respectively. The bankrupt, who was a solicitor, and acted for himself in the matter of the petition, had not obtained his certificate. *Held*, that the costs ordered to be paid to the bankrupt belonged to him, and did not pass to the assignees. *Ex parte Grimstead, in re Gibbs*; *Ex parte Gibbs*, in the same matter; *Ex parte Strahan*, in the same matter, 1 De Gex, 72.

**EQUITABLE MORTGAGEE.**

*Sole creditors' assignee.—Form of order.*—Form of order upon a petition of an equitable mortgagee who was sole creditors' assignee. *Ex parte Young, in re Worth*, 1 De Gex, 146.

See *Mortgagee*; *Reputed Ownership*.

**EVIDENCE.**

*Delivery of proceedings to solicitor to be proved in Chancery suit.*—Proceedings ordered to be delivered to the bankrupt's solicitor, to be proved in a chancery suit, the solicitor and his agents, (who were solicitors of the court,) undertaking to return them in a month. *Ex parte Jones, in re Jones*, and *In re Knight*, 1 De Gex, 38.

**EXAMINATION.**

*Adjournment sine die.*—Where a bankrupt was examined before the commissioner respecting a book which the bankrupt stated that he had destroyed, the commissioner thinking, upon evidence produced before him, that the book had not been destroyed at the time stated by the bankrupt, adjourned the examination *sine die*, the Court of Review directed the examination to proceed. *Ex parte Gibbs, in re Gibbs*, 1 De Gex, 1.

**FORGED INSTRUMENT.**

See *Petitioning creditor's debt*.

**FRAUDULENT DELIVERY.**

*Act of bankruptcy.*—Payment of a debt by cheque may be a fraudulent preference.

When such payment was made without pressure, after a resolution had been come to by the debtors to suspend payment of their debts generally, it was held, under the circumstances of the case, a fraudulent preference, whether the debtors contemplated actual bankruptcy or not. *Ex parte Simpson, in re Hunt*, 1 De Gex, 9.

Case cited in the judgment: *Abbott v. Burbage*, 2 Scott, 656; *Gibson v. Boutts*, 3 Scott, 229; *Morgan v. Brundrett*, 5 B. & Ad. 296; 2 N. & M. 280; *Gibbins v. Phillip*, 2 M. & R. 238; *Stewart v. Moody*, 1 C. M. & R. 177; *Newton v. Chantler*, 7 East, 138; *Cuming v. Bailey*, 6 Bing. 363; 4 M. & P. 36; *Ex parte Shorelands* 7 Ves. 88; 1 Rose, 210; *Kensington v. Chantler*, 2 M. & S. 38; *Bevan v. Nunn*, 9 Bing. 107; *Carr v. Burdiss*, 1 C. M. & R. 782; *Cotton v. James*, 3 Car. & P. 505;

*Abell v. Daniell*, 1 Moo. & Malk. 371; *Lord Charendon v. Burham*, 1 Y. & C. N. C. 688; *Ex parte Thorold*, 3 M. D. & De G. 274.

**FRIENDLY SOCIETY.**

The rules of a friendly society provided, that the treasurer retaining upwards of 10*l.*, more than 7 days after he was required to pay it over, should be excluded from the society. They also provided that a particular firm should be the bankers of the society, with power for a general meeting to appoint other bankers. *Held*, that the bankers for the time being were not officers, so as upon their bankruptcy to entitle the society to payment in full. *Ex parte Harris, in re Clarke*, 1 De Gex, 162.

**INJUNCTION.**

See *Contempt*.

**INSOLVENT ACT.**

See *Annulling fiat*.

**INSPECTION OF DOCUMENTS.**

See *Solicitor*, 3.

**JURISDICTION.**

See *Contempt*.

**LEGATEE.**

See *Proof of debt*, 2.

**LIEN.**

See *Solicitor*, 3.

**LIMITATION, STATUTE OF.**

See *Solicitor*, 1.

**MARKET GARDENER.**

See *Trading*.

**MISDESCRIPTION OF BANKRUPT.**

Description of a bankrupt as of a particular parish in a particular county, held sufficient, although the parish was partly in that county and partly in another, and the bankrupt's shop was in the other; an affidavit being produced of there being no other person of the same name and trade in the parish. *In re Woodhead*, 1 De Gex, 99.

**MORTGAGEE.**

*After order for sale partly effected, proof permitted.*—Where a legal mortgagee had obtained the commissioner's order for sale of the property comprised in the security, and part of the property had been sold, and the proceeds applied in reduction of the debt, and the remainder of the property proved unsaleable, the mortgagee was permitted to give up the unsold property, and prove for the unpaid portion of his debt. *Ex parte Greaves, in re Price*, 1 De Gex, 119.

And see *Equitable mortgagee*; *Reputed ownership*.

**OFFICE FEES.**

1. Where, under a fiat sued out by the bankrupt himself, three meetings had been advertised for the choice of assignees, but none had been chosen, and at the last of the meetings the choice was adjourned *sine die*: *Held*, that the bill of costs of the bankrupt's solicitor, amount-

ing to 36l. 1s. 6d., was payable out of the assets in hand, amounting to 37l. 11s. 7d., after payment of the messenger's costs, (the official assignee waiving remuneration,) without any reservation being made in respect of the office fees of 20l. and 10l. *Ex parte Patterson, in re Williams*, 1 De Gex, 158.

2. *Assets insufficient*.—Where the sums of 20l. and 10l., directed to be paid by 1 & 2. W. 4, c. 56, ss. 46 & 55, had been paid out of an estate which was insufficient to pay those sums and the petitioning creditor's costs up to the choice, the Lord Chancellor refused to order the payments to be refunded to the petitioning creditors. *Ex parte Hopkins, in re Forsyth*, 1 De Gex, 204.

And see *Annulling fiat*, 2, 3; *solicitor*, 2.

#### PARTNERSHIP.

1. *Notice of dissolution*.—*Rights of transferee of debts due from continuing to retiring partner*.—On a dissolution of partnership, the retiring gives to the continuing partner a bond for a sum payable by instalments, and after one instalment is paid, it is agreed that the bond shall be cancelled, on the obligor giving fresh bonds for sums amounting to the sum then due, such new bonds being executed to obligees nominated by the retired partner. At the time of executing the new bonds, the obligee is under some degree of pecuniary pressure, but does not contemplate bankruptcy or insolvency. Afterwards he becomes bankrupt. *Held*, that the new obligees were entitled to prove against his estate, and that the want of any notification of the dissolution of partnership, or of any change in the style of the firm, or of any consideration between the new and old obligees, or between the obligor and the new obligees, would make no difference. *In re Todd*, 1 De Gex, 87.

2. *Dissolution*.—*Retiring partner*.—*Reputed ownership*.—Two partners trade under the name of one of them only, and upon a dissolution, that one continues the business, the other retiring; but no apparent change takes place in the firm. By the agreement on the dissolution, the stock in trade belongs to the continuing partner, who afterwards becomes bankrupt. The stock in trade is sold by his assignees as his separate property, and the retired partner, though cognizant of the fact, makes no objection or claim on the retired partner becoming bankrupt. *Held*, that the stock in trade was not in the reputed ownership of the two, but ought to be administered as the separate estate of the continuing partner. *Ex parte Wood, in re Todd*, 1 De Gex, 134.

#### PETITION OF INSOLVENT.

1. Circumstances in which a petition under the 7 & 8 Vict. c. 96, is deemed imperfect. *In re Sheller*, 31 L. O. 274.

2. An insolvent is not at liberty to add any material allegation to the form of petition prescribed by statute 7 & 8 Vict. c. 96, s. 2. *In re James Phineas Davis*, 31 L. O. 490.

3. Where it appears from an insolvent's

schedule that his petition is not true in fact, such petition will be dismissed. *In re Smith*, 31 L. O. 513.

4. An insolvent who has petitioned the Insolvent Debtors' Court has a *locus standi* in the bankruptcy court, under 7 & 8 Vict. c. 96, if his schedule contains any debts contracted subsequent to the date of his petition to the insolvent court. *In re Cooper*, 31 L. O. 15.

And see *Attestation of petition*.

#### PETITIONING CREDITOR'S DEBT.

*Forged instrument*.—*Transfer of fiat to another commissioner*.—At the sitting for opening the fiat, it appeared, that for securing the petitioning creditor's debt, the trader against whom the fiat was issued gave him a promissory note, which there were grounds for believing was forged. No prosecution having been instituted, the commissioner declined proceeding with the fiat. On the petition of the petitioning creditor, the Court of Review ordered the fiat to be transferred to another commissioner and proceeded with. *Ex parte Hind, in re Barker*, 1 De Gex, 161.

#### PROOF OF DEBT.

1. *Breach of trust*.—*Change of firm*.—A testatrix bequeathed 3,000l. to two trustees upon trust, to invest it in the funds or in real securities, or to lend it to the house of H. & Co., by whatever firm the same might be called, at interest, with power to vary the securities for others of a like nature. The house of H. & Co. then consisted of the two trustees and two other partners. One of the trustees died, and successive changes took place in the firm, which ultimately consisted in the surviving trustee and a new partner, who had notice of the trust. At the death of the testatrix, the then firm owed to her estate more than 3,000l., and that amount, less the legacy duty, was suffered to remain due from them at interest, and was, on the successive changes of the firm, carried over to the credit of the trustees as due from the new firm, and on the last change, the surviving trustee took from his partner and himself a promissory note for the amount, payable six months after notice. On the firm becoming bankrupt, *held*, that a breach of trust had been committed, and that there was a right of proof against each separate estate. *Ex parte Poulson, in re Harford*, 1 De G. 79.

2. *Profits arising from misapplied fund*.—*Legatees*.—Executors pay the legacies bequeathed to infants to their father, who invests them on colonial securities, and makes large profits, and becomes bankrupt: *Held*, that the legatees were entitled to have proof made upon the whole amount of the profits. *Ex parte Montefiore, in re Montefiore*, 1 De Gex, 171.

3. *Costs of wife's proctor*.—Where a husband sued his wife in an ecclesiastical court for a divorce, on the ground of adultery, and before any monition for costs, taxation, or any bill of costs corrected, or any decree, order, or sentence, the husband became bankrupt and discontinued the suit: *Held*, that the wife's

proctor might prove against the husband's estate for the amount of his bill of costs. The whole of the costs of executing a commission to examine witnesses, sued previously to but closed after the act of bankruptcy, held to be proveable. *Ex parte Moore, in re Westrop*, 1 De Gex, 173.

Cases cited in the judgment: *Van Sandau v. Browne*, 9 Bing. 407; *2 Moore & Scott*, 556.

And see *Mortgagee*.

4. *Unliquidated damages*.—An agreement is entered into for the sale of a ship at sea, when she should arrive at her port of discharge, for 4,000*l.*, and that within one month after her arrival, or such further time as should be necessary for repairs and discharging the cargo, the purchaser should, on the execution of a bill of sale to him of the vessel, deliver promissory notes for the purchase money; in default thereof, the vendor was to be at liberty to re-sell, and the purchaser was, within a month after the re-sale, to pay the loss occasioned thereby; and if the ship was lost, the agreement was to be void.

The purchaser becomes bankrupt before the ship arrives, and on the assignees declining to complete the contract, the vendor re-sells: *Held*, that he could not prove for the loss occasioned by the re-sale. *In re Gales*, 1 De Gex, 100.

#### PROMISSORY NOTE.

*Whether joint or several*.—*R. M.*, who carries on business with *J. C.*, *J. P.*, and *T. S.*, as bankers, signs one of the notes of the bank in this form,—"I promise to pay, &c. For *J. C.*, *R. M.*, *J. P.*, and *T. S.* *R. M.*" On the firm becoming bankrupt, *held*, that the holders could not prove on this note against the separate estate of *R. M.* *In re Clarke*, 1 De Gex, 153.

Cases cited in the judgment: *Hall v. Smith*, 1 B. & C. 407.

#### PROTECTION.

*Semble*. That a protection granted under the stat. 7 & 8 Vict. c. 70, s. 7, is not a sufficient answer to a summons issued under the stat. 8 & 9 Vict. c. 127. *In re Dove*, 31 L. O. 419.

#### REPUTED OWNERSHIP.

1. *Equitable mortgage*.—*Notice*.—A trader deposits policies of assurance with his banker to secure the floating balance due from him, and signs a memorandum of the object of the deposit, of which notice is given to the insurance office. Afterwards he takes a partner, and the policies remain, and are treated as a security for the floating balance due from the firm; but of this change in the object of the security, no memorandum is signed, nor is any notice given to the office. On the firm becoming bankrupt: *Held*, that the bankers were entitled to the usual order, as in the case of an equitable mortgage, without a written memorandum.

2. A mortgagee of a policy of assurance, deposits it by way of sub-mortgage, and gives notice of the sub-mortgage to the insurance office, but not to the original mortgagor: *Held*, that this was sufficient to take the policy out of the reputed ownership of the mortgagee.

3. A bond which is executed to secure the payment of bills of exchange, is mortgaged together with the bills, which are indorsed. Afterwards the mortgagor deposits the bonds and the bills by way of sub-mortgage, and becomes bankrupt, no notice of the sub-mortgage having been given to the obligor: *Held*, that the sub-mortgage was good against the assignees.

4. Deposit by way of mortgage, of a land-order of the New Zealand Company held to be good, without notice being given to the company of the deposit. *Ex parte Barnett*, in re *Reay*, 1 De Gex, 194.

Case cited in the judgment: *Ex parte Price*, 3 M. D. & De G. 586.

And see *Partnership*, 2.

#### REVIEW, COURT OF.

See *Appeal*; *Contempt*.

#### SALE.

See *Mortgagee*.

#### SET-OFF.

*Stoppage in transitu*.—A vendor of cotton in America, by direction of the purchasers in England, ships the cotton on board a vessel belonging to the latter.

The purchaser becomes bankrupt, and afterwards the vessel arrives in England and is taken possession of by a mortgagee in right of his mortgage. The mortgagee happens to be a partner in a firm, who are the agents of the vendor, and upon a notice from them claiming a right to stop the cotton *in transitu*, he permits them to take possession of it. They sell it at a loss, and give their principal credit in his account for the proceeds.

The vendor becomes bankrupt. An action of trover for the cotton is commenced against the mortgagee by the purchaser's assignees, and is compromised, upon the terms of the purchaser's assignees proving against the estate of the vendor for the amount of the proceeds, for the benefit of the mortgagee, the latter agreeing, in the event of no dividend being paid by a certain day, that judgment for the full amount of the proceeds should be entered up against him in the action.

Proof is made accordingly, but no dividend paid, and the mortgagee pays the full amount of the proceeds of the sale to the purchasers' assignees.

The vendor's assignees then tender a proof for the original price of the cotton against the estate of the purchasers.

*Held*, that the proof ought to be admitted for the full amount. *Ex parte Molyneux*, in re *Humberston*, and *ex parte Branker*, in the same matter, 1 De Gex, 121.

#### SMALL DEBTS.

1. The application for a summons to a debtor, under the 8 & 9 Vict. c. 127, must be signed by the creditor himself, and the signature of an attorney or agent of the creditor will not be sufficient. *Anonymous*, 32 L. O. 16.

2. Service of summons under act. Power of commissioner when defendant is in custody. *Lewis v. Edwards*, 31 L. O. 209.

#### SOLICITOR.

1. *Assets recovered without his assistance.—Statute of Limitations.*—Where the assets had been sold by the assignee on credit, and part only of the purchase money was paid, which was applied in part payment of the bill of costs of the solicitor to the commission, and after a lapse of several years the assignee was ordered to make good, and did make good, the remainder of the purchase money out of his own pocket: *Held*, that out of this money so made good, the solicitor was entitled to be paid the remainder of his bill, although it was recovered without his assistance, and although more than six years had elapsed since the date of the most recent item in the bill. *Ex parte Brutton*, in *re Fisher*, 1 De Gex, 116.

2. *Paying costs.*—*Without reservation of office fee of 10*l.* and 20*l.**—Where an official assignee had been appointed, but although three meetings had been advertised for the choice of assignees, no creditor had attended, and the bankrupt passed his last examination: *Held*, that the bill of the solicitor to the petitioning creditor was payable out of the assets realised, although there would not then remain any fund to pay the 10*l.* and 20*l.*, made payable by the 1 & 2 Will. 4, c. 56, ss. 46 and 55, the bankrupt having obtained his certificate, and an affidavit being made of there being no probability that any creditor would come in and prove. *Ex parte Teague*, in *re Berrenger*, 1 De Gex, 140.

3. *Lien.*—*Right of assignees to inspect documents.*—The right of assignees to inspect or take a copy of a title deed of the bankrupt's property in the hands of his solicitor, is no higher than the right of the bankrupt himself, and therefore, where the assignees petitioned that the solicitor might produce or give an attested copy of such a document, on being paid only the portion of his costs relating thereto, and the costs of the production or copy, the petition was dismissed with costs. *Ex parte Underwood*, in *re Hemsworth*, 1 De Gex, 190.

And see *Evidence*.

#### STOPPAGE IN TRANSITU.

See *Set-off*.

#### SURETIES.

See *Bond*.

#### SURRENDER OF BANKRUPT.

See *Annulment Fiat*.

#### SUMMONS, 8 & 9 VICT. C. 127.

See *Protection*.

#### TRADING.

*Market Gardener.*—A tenant of 130 acres, under a farming lease, which obliges him to fallow or plant with peas or potatoes (among other things) every third year—has on his farm twelve acres of young potatoes and twenty acres of green peas growing in open fields every year, and consigns the produce for table consump-

tion to London salesmen, to whom he allows such commission as is usually allowed by market gardeners: *Held*, that he was not a market gardener within 5 & 6 Vict. c. 122, s. 10. *Ex parte Hammond*, in *re Hammond*, 1 De Gex, 93.

#### TRUSTEES.

See *Assignees, choice of; Proof of debt*, 1.

#### UNCERTIFICATED BANKRUPT.

A commissioner has no authority to discharge an uncertificated bankrupt from arrest. In *re Robinson*, 31 L. O. 514.  
And see *Earnings*.

#### UNLIQUIDATED DAMAGES.

See *Proof of debt*, 4.

#### VEXATIOUS COSTS.

*Semble*, That a debtor who vexatiously defends an action whereby the costs are increased, and who, at the time of giving instructions to his attorney, has no reasonable prospect of being able to pay the costs incurred by the creditor, is, after judgment obtained, and on being summoned under 8 & 9 Vict. c. 127, liable to be committed under the 1st sect. of that act, for having wilfully contracted that part of the judgment debt which consisted of the costs, without reasonable prospect of being able to pay it, notwithstanding there was no evidence before the commissioner that the original debt had been improperly contracted. *Reynolds v. Parker*, 31 L. O. 514.

#### WIFE'S COSTS.

See *Proof of debt*.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Lord Chancellor.

ORDER OF COMMITTAL FOR CONTEMPT.—AFFIXING THE SEAL OF THE COURT TO THE WARRANT OF COMMITTAL.

*An order of committal for contempt contains a sufficient adjudication of the contempt having been committed, if such act can be inferred from recitals of it in the order; but it is more proper to aver the contempt distinctly. Such order may contain a condition that the party committed shall pay the taxed costs of committal and discharge; although it is most usual to defer the question of costs until the party applies to be discharged. A warrant under the hand and seal of a judge of the Court of Review for the committal of a party in contempt, must have affixed to it the seal of the courts; and therefore the party arrested under such warrant, not so sealed, is entitled to be discharged unconditionally.*

PENDING the proceedings before the Court of Review in a certain bankruptcy case, Mr.

Van Sandau, a solicitor in the cause, published and distributed a printed paper with his name attached, professing to be a statement of extraordinary frauds in the said bankruptcy, and to show how such frauds had been facilitated and encouraged, and how they might be prevented. Whereupon Messrs. Turner and Hensman, also solicitors in the cause, presented to the court a petition, praying, amongst other things, that Mr. Van Sandau might be committed for contempt—that a warrant might be issued for his committal, and that he might be ordered to pay to the petitioners *their costs, charges, and expenses* of, and incident to, the application. To this petition the alleged libel was appended as a schedule. Accordingly, the Court of Review on the 4th of February, 1844, made such order, which after reciting the said petition and setting out the above-mentioned schedule, concluded in the usual form of committal. On the 19th of the same month, Sir George Rose, one of the then judges of that court, issued a warrant (reciting the last order) under his hand and seal, for the committal of Mr. Van Sandau, who was thereupon arrested. On the 21st of the same month an order was made by the court on the petition of the prisoner, discharging him from custody on his depositing a certain sum with the registrar on account of Messrs. Turner and Hensman, and on his undertaking to pay them *their costs, charges, and expenses* of and incident to the said application: by another order dated on the same day, he was absolutely discharged. Mr. Van Sandau then brought an action of trespass against the petitioners for assault and false imprisonment. On the 8th of May, 1844, and after the declaration, plea, and demurrer had been entered, the Court of Review, upon the application of the defendants, granted an injunction to restrain all parties from proceeding in the action, except upon the argument of three specified objections. In the following November, this injunction was discharged by the Chancellor—liberty being given for the parties to apply to the court after the demurrer should have been argued. On the 21st of January, 1845, the case was argued in the Queen's Bench, and on the 31st of the same month judgment was given for the plaintiff, upon two grounds—1st, that the plea did not allege that Sir George Rose was one of the judges of the Court of Review at the time he issued his said warrant;—2ndly, that a warrant merely under the hand and seal of a judge, does not authorise the arrest of a person for contempt of court.

In order to prevent further litigation, the parties agreed to refer all the matters, including the above action, to the decision of the Chancellor, who now gave judgment to the effect following:—

The validity of order of committal is to be first considered; and in respect of this point, the main question is, (as his Lordship remarked in November, 1844, on discharging the injunction of the Court of Review,) whether the words to the effect, that Van Sandau should stand committed for contempt "in writing, printing,

and publishing" the circular set out in the schedule of Messrs. Turner and Hensman's petition, constituted a sufficient adjudication that a contempt had been committed. This was not decided by the Court of Queen's Bench, as its judgment was given on the defects in the warrant of committal. Had there not been numerous precedents to the contrary, such an order would not have been deemed sufficient, as his Lordship would have considered it necessary that there should have been a direct and distinct adjudication, and not merely by way of inference or agreement, that the act of contempt had been committed. In fact, that the order should have corresponded with those of Lord Cottenham in *Mr. Lechmere Charlton's case*, (in *re Ludlow Charity*, 2 Myl. & Cr. 316;) of Lord Brougham, in *Willesley v. Duke of Beaufort*, (2 Russ. & Myl. 690); and of Lord Hardwicke in, amongst others, the case of Martin in 1747, (see this order in 2 Russ. & Myl. 274, note.) But his Lordship had been supplied with so many instances in which orders similar to that now under discussion had been made and acted upon, that he should not be justified in discharging it upon this objection. The following were the cases cited:—*Mary Read and John Huggonson*, 2 Atk. 469, (S.C. *Roach v. Garven*, *ibid.*); *Morgan v. Jones*, 1745; *Ex parte Parnell in Fotherby v. Preston*, March 26, 1748, and another case in Nov., 1751. All these orders were made by Lord Hardwicke. Similar orders had also been made by Lord Eldon in *Priestley v. Lamb*, 5 Ves. 420, and *ex parte Thomas and Mary Crowe and James Delahay, in the matter of Quick*, on the 21st of December, 1806. In the face of these precedents the present order could not be discharged as invalid and insufficient; although the more proper and correct forms were those of Lord Cottenham and the other learned judges in the cases first cited.

Another objection made to this order was in respect of its direction to pay the costs of the application. Orders of committal for contempt do not usually contain such directions, but are ordinarily confined simply to the commitment; the court making such order for payment of the costs as it thinks proper, and as a condition for liberation, when the parties apply to be discharged. All the precedents are silent as to the costs, although some of the cases related to great and aggravated misconduct—the orders for the discharge of the offenders containing the conditions for payment of the costs. But as the Court of Review has jurisdiction over the subject matter of the petition, it has by its general authority a right to adjudicate upon the costs in its order of committal. In cases of contempt in breaches of injunctions, if not contemptuous breaches, and consequently no commitment—the court orders payment of the expenses of application—*Bullen v. Oney*, 16 Ves. 141, and *Leonard v. Atwell*, 17 Ves. 385; the inference from which cases is, that the rule is for the convenience of, and not binding upon, the court. A further objection to this order is, the direction to pay all the petitioners, "charges



and expenses." As it ought not to have gone to this extent, these words must be struck out, and if Mr. Van Sandau insists upon it, there must be a fresh taxation thereof. The order in other respects confirmed.

His Lordship then referred to four other orders of the 8th and 17th days of February, 1846, connected with the above, which were declared to be unimpeachable, but do not affect the present judgment.

The next question for consideration is the validity of the warrant, to which, either by mistake or negligence, the seal of the court was not affixed, as required by the 31st of the Rules and Orders of January, 1832, (*Bankruptcy*). This omission renders the warrant invalid, and therefore it is not necessary to go into the other objections. Mr. Van Sandau must receive back the costs of the conditional order for his discharge. The only remaining question respects the action at law, to which the defendants had pleaded not guilty. The verdict must be for the plaintiff, but very moderate damages will compensate him, considering that the action could not have been sustained but for a defect in the proceedings. Damages assessed at 10*l.* upon the whole record, and the taxing-master in bankruptcy to be directed to tax the costs of the action as they would have been in the Queen's Bench.

*Re Van Sandau.* April 23, 1846.

#### Vice-Chancellor of England.

##### INJUNCTION.—COMMITTAL.

*In order to obtain an order to commit for breach of an injunction, it should be proved that both the injunction and the notice of motion were personally served upon the parties sought to be committed.*

*Semble, that the order nisi for dissolving an injunction may be made absolute on the day appointed for showing cause, if no counsel appears to show cause, and on the motion of the leading counsel for the defendant.*

THIS was a motion to commit the defendants and their solicitor for breach of an injunction which had been obtained to restrain proceedings at law, and for payment of the costs of the application. The bill was filed the 13th of Dec. 1845, and the answer on the 13th of Jan. 1846. On the 6th of Feb. exceptions were taken to the answer for insufficiency, which were allowed, and on the same day, the answer being found insufficient, an order was obtained for the common injunction, and on the 7th of February the common injunction was served. A further answer was then put in, and on the 20th of Feb. an order nisi was obtained for dissolving the injunction, unless cause shown on the 25th. On the 25th of Dec. Mr. Bethell moved to make the order absolute, and no counsel appearing to oppose, the order was made, and he so indorsed his brief, and the defendants then proceeded with the action. It appeared, however, that the plaintiff's junior counsel had been instructed in the usual way to undertake to show

cause on the merits, and this undertaking he had handed in to the register.

Mr. Cooper and Mr. Glasse, in support of the motion, said there could be no doubt the practice was for the junior counsel only to be instructed on the day for showing cause, as no brief of the pleadings was allowed, and then if cause was shown, an undertaking was given to show cause at the next seal day, and if no cause was shown, the order nisi for dissolving the injunction was made absolute as a matter of course. The only alteration made in the practice was by the orders of 1828, which allowed the order nisi to be obtained on petition. They referred to *Harrison's Pr. by Newland*, v. 2. p. 547, and *Smith's Pr.* v. 1, p. 471, in the latter of which it was expressly stated that care should be taken only to give the common half guinea brief as briefs of the pleadings are not allowed. It was also to be observed that the affidavit proving the service of the order nisi was not made until the 2nd of March, so that when Mr. Bethell moved there was no affidavit of service.

The Vice-Chancellor said he believed it to be the common every day practice for leading counsel to get up and ask for the order nisi to dissolve an injunction to be made absolute. What Mr. Smith said might be very true, but there might be something else which might be done, and what his Honor had stated was the every day practice.

Mr. Cooper then repeated the objection respecting the affidavit.

Mr. Bethell and Mr. Perry contra, said the motion was against three defendants, not one of whom had been served with the injunction, and only one with the notice of motion, although personal service, both of the injunction and of the notice was indispensable.

The Vice-Chancellor said, that being the case, the motion must be dismissed with costs. *Newman v. Parsons.* April 16th, 1846.

#### Vice-Chancellor Wigram.

##### INJUNCTION.—WASTE.—PARTIES.—AFFIDAVIT.

*A suit had been instituted by a purchaser from a mortgagee against the mortgagor, for a declaration of his rights, and upon the application of the plaintiff, an order had been made for a receiver. Pending this order, but before the appointment of the receiver, the plaintiff proceeded to cut down underwood, and to exercise other acts of ownership. One of the defendants, the agent of the mortgagor, (who was himself abroad, and had not been served with the subpoena,) without proving any authority for doing so, applied, upon affidavit merely, for an injunction. The motion was refused, upon the grounds, that the defendant, though agent, had no interest in the estate, and might have filed a bill for his principal, upon which to found the application.*

THE plaintiff, John Hunter, had filed his

bill as purchaser from a mortgagee of the life interest of Sir Francis Vincent, who was abroad, against the latter and Mr. Nockolds, his agent. Upon the plaintiff's application, the court had made an order for the appointment of a receiver, but no step had been taken for the purpose of carrying out this order, nor had Sir Francis Vincent been served with the subpoena to appear.

Mr. *Schomberg* now moved, at the instance of Nockolds, to restrain Hunter from cutting timber and underwood upon the estate, but the affidavit did not state the time at which the deponent was informed of the acts of which complaint was made.

*His Honour* suggested a doubt, whether such a motion could be made without filing a bill, and also, whether a defendant could make such an application against a plaintiff in the cause.

Mr. *Schomberg* contended that to restrain a plaintiff from acting in violation of an order of the court, that order obtained, too, by himself, an application could be made by a defendant, in a suit already existing. This was not like an original application for an injunction, but it was rendered necessary, in order to prevent a plaintiff from acting in contravention of an order of the court. Nockolds having been made a defendant to the suit, as agent of Sir Francis Vincent, (who was abroad,) had a right on his behalf, to protect his property, and to draw the attention of the court to a contempt of one of its orders. He cited *Broad v. Wickham*, 4 Sim. 511; *Blanchard v. Cowthorne*, 6 Sim. 155; *Stratton v. Davidson*, 1 Russ. & M. 484.

*His Honour* said, although nothing could be more improper than to cut timber after an order for the appointment of a receiver, yet the affidavit ought to show the time at which the knowledge of an intention to do that act first came to the applicant. The application was made by the agent of the proprietor, and such agent, having no interest in the estate itself, had no right to make such an application. He might have filed a bill in the name of his principal for an injunction, but he had not done so, and he must therefore refuse the motion.

*Hunter v. Nockolds*. March 14, 1846. Lincoln's Inn.

Note.—The court appears to have granted an injunction upon the application of a defendant against a plaintiff, in several cases. Vide *Cholmondeley v. Clinton*, 19 Ves. 261; *Wedderburn v. Wedderburn*, 4 My. & Cr. 585; *Ford v. Crompton*, 1 Cox. 296; *McNamara v. Arthur*, 2 Ball & Beatty, 349, and 1 Ball and B. 320. The general rule is, that an agent cannot file a bill in the name of his principal without his authority, but an agent may defend or protect the interest of his absent principal without authority. If such agent does file a bill without authority, the bill may be taken off the file, and the agent ordered to pay all the costs. *Wright v. Castle*, 3 Mer. 12; *Hood v. Phillips*, 6 Beav. 176, and the cases there cited.

### Queen's Bench.

(Before the Four Judges.)

TRANSFER OF STOCK UNDER THE 11 GEO. 4, AND 1 WILL. 4, C. 13, S. 13.

*A. transfers stock to B. and accepts the money. The transfer was executed according to the directions given by the 11 Geo. 4, and 1 W. 4, c. 13, s. 13, except that the acceptance by the transferee was not in writing as required by that statute.*

*Held, in an action by A. against the Bank of England for the amount of stock so transferred, that the provision of the statute with regard to the mode of acceptance, was merely directory, and that the transfer being valid, A. had no right of action against the bank.*

THIS was an action by the plaintiff, alleged to be holder of stock to the amount of 373*l.* 19*s.* 4*d.* in the three-and-a-half per cents, against the Bank of England. Plea, that the plaintiff had no such stock. Verdict for the defendants.

The statute 11 Geo. 4, and 1 W. 4, c. 13, s. 13, provides that all transfers of stock shall be entered and registered in books kept by the Bank of England, "which entries shall be conceived in proper words for that purpose, and shall be signed by the parties making such assignments or transfers, or, if any such party or parties be absent, by his, her, or their attorney or attorneys, thereunto lawfully authorised by writing, under his, her, or their hands and seals, to be attested by two or more credible witnesses, and that any person or persons to whom such transfer or transfers shall be made, shall respectively underwrite his, her, or their acceptance thereof; and that no other method of assigning or transferring any such stock and the annuities attending the same, or any part thereof, or any interest therein, shall be good and available at law." It appeared that a transfer of this stock had taken place which was correct in all respects according to this section of the act of parliament, except that there was no acceptance in writing by the transferee. It appeared in evidence, that as soon as the transfer took place, the money was given to a third party who has since absconded.

Mr. Serjeant *Shee* moved for a rule to show cause why a verdict should not be entered for the plaintiff, on the ground that there had not been a valid and legal transfer of the stock. The act of parliament directs a particular mode to be adopted for the transfer of stock, and declares that no other mode of conveyance shall be legal. The transfer in this case is incomplete, because the provision of the statute requiring an acceptance in writing by the transferee has not been observed. If a fraudulent or illegal transfer of the stock had taken place, still the Bank of England would be responsible to the plaintiff for the amount of stock so transferred. *Davis v. The Bank of England.*<sup>a</sup> In

<sup>a</sup> 2 Bing. 393.

*Gade's case*<sup>b</sup> it was held that an indictment for forging a transfer of stock was good although the stock had never been accepted by the person in whose name it stood. But that case is distinguishable because there the court held that the indictment was sustained if the transfer forged by the prisoner was complete on the face of it, and imported that there was such a description of stock capable of being transferred.

*Lord Denman, C. J.* I am of opinion that this transfer is valid. It is quite impossible to say that acceptance in writing by the transferee is actually necessary to constitute a valid transfer. Many circumstances may make that impossible. The acceptance of the stock does not constitute the transfer; and when it is said in the statute, "that no other method of assigning or transferring any such stock shall be good and available at law," such enactment must be confined to the assigning and transferring, and not to the acceptance which is only directory. The case in *Leach* appears to me a strong authority in support of this view of the subject. It would be strange to suppose that a person could put the price of stock in his pocket and then dispute the validity of the transfer.

*Mr. Justice Patteson.* I am of the same opinion. The question is whether the plaintiff is still the holder of this stock. If the acceptance in writing by the transferee is necessary to complete the transfer, then it would follow that every foreigner who purchased English stock would have to come over to this country in order to accept it. This is a strong reason in my mind for holding that the clause in the statute is only directory, and that the words, "No other method shall be good and available at law," must apply to the instrument of transfer and not to the acceptance.

*Mr. Justice Williams* concurred.

*Mr. Justice Wightman.* I am of the same opinion. I think that as against the transferor, there has been a good and valid transfer of the stock; it is not for that person, after accepting the money, to say that the transfer is invalid because there has not been a formal acceptance by the transferee.

Rule refused.

*Foster v. The Bank of England.* Easter Term, 1846.

#### Queen's Bench Practice Court.

JUDGMENT AS IN CASE OF A NONSUIT.—  
EXCUSE TO DISCHARGE RULE NISI FOR.

*An affidavit stating that, after notice of trial was given, the plaintiff was advised that he could not safely proceed to trial, by reason of his "having inadvertently and in ignorance of an important fact in the cause, omitted to instruct his attorney," discloses sufficient cause to discharge a rule for judgment as in case of a nonsuit, where there has been but one default.*

*Addison* showed cause against a rule for judgment as in case of a nonsuit, upon an affidavit

by the plaintiff, stating that, after notice of trial had been given, deponent was advised that he could not safely proceed to trial by reason of his "having inadvertently, and in ignorance of an important fact in the cause, omitted to instruct his attorney in due time; and that deponent's claim is just and true in all respects." The learned counsel submitted that, as there had been but one default, the affidavit disclosed sufficient ground for discharging the rule upon the usual peremptory undertaking to try at the next assizes.

*Lawes, contra*, contended that the affidavit was evasive and inconsistent, and stated no "just cause" within the meaning of the statute giving the right to move for judgment as in case of a nonsuit. In none of the reported cases had the rule been discharged upon an affidavit so loose as the present; and even should it be supposed to disclose an excuse for the attorney, it showed none for the plaintiff himself. *Cleasby v. Poole*, 3 Dowl. 162.

*Wightman, J.* I think that some excuse is shown, and we do not look very critically at affidavits of this nature. The rule must be discharged upon the usual terms.

Rule discharged accordingly.

*Metcalfe v. Tattersall.* Easter Term, 1846.

#### Exchequer.

NOTICE OF ACTION.—FISHING.—OWNER OF LAND.

*Where a statute requires notice of action for anything done in pursuance of it, such notice must be given in all cases where the party acts under a bona fide, though mistaken belief, that what he does is in pursuance of the statute. Therefore, where a statute enabled the owner of land, or his servants, to seize the rods and lines of any person unlawfully fishing thereon, and the servants of P. seized the rod of a person fishing on land which they believed was P.'s, but which in fact was not.*

*Held, that they were nevertheless entitled to notice of action.*

TRESPASS for seizing and taking certain fishing rods and lines of the plaintiff. Plea not guilty by statute.

At the trial before *Parker, B.*, at the Carnarvon assizes, it appeared that the plaintiff was fishing at a place adjoining the manor of Colonel Pelham, and that the defendants, who were the servants of Colonel Pelham, seized the plaintiff's rods and lines under the belief that he was illegally fishing on Colonel Pelham's land. It afterwards turned out that the exact spot on which the plaintiff was fishing did not belong to Colonel Pelham, though it was within a foot of his land. On behalf of the defendants it was objected that they were entitled to notice of action under the 75th section of the 7 & 8 Geo. 4, c. 29. The learned judge was of that opinion, and directed the jury to find for the defendants, reserving leave for the plaintiff to move to enter a verdict for 5*l.*, if the court

<sup>b</sup> 2 Leach, C. C. 732.

should think the defendants not protected by the above act, a rule nisi having been obtained accordingly.

*Yardley* showed cause. The 34th section of the 7 & 8 Geo. 4, c. 29, enacts that if any person shall unlawfully and wilfully take or destroy, or attempt to take or destroy any fish in any water which shall be private property, every such offender being convicted thereof shall forfeit above the value of the fish a sum not exceeding five pounds. The 35th section enacts, that if any person shall at any time be found fishing against the provisions of this act, it shall be lawful for the owner of the ground, water, or fishery, where such offender shall be so found, his servants, or any person authorised by him, to demand from such offender any rods, lines, hooks, nets, or other implements for taking or destroying fish which shall then be in his possession, and in case such offender shall not immediately deliver up the same, to seize and take the same from him for the use of such owner." The 75th section "for the protection of persons acting in the execution of that act," enacts that all actions against any person for anything done in pursuance of the act shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed, and notice in writing of such action and the cause thereof shall be given to the defendant one calendar month before the commencement of the action." The 73rd section authorises the owners of the property to apprehend any offender, which distinguishes the present case from *Hopkins v. Crowe*, 4 Adol. & E. 774. Under the 24 Geo. 2, c. 44, s. 1, it has been held that a magistrate who means to act in the execution of his office is entitled to notice of action. *Bird v. Gamston*, 4 Doug. 275. Also, where a magistrate acts upon a subject matter of complaint over which he has authority, but which arises out of his jurisdiction. *Prestidge v. Woodman*, 1 B. & C. 12. So where one magistrate acted alone in a matter which required the concurrence of two, it was held that he was acting in execution of his office, and entitled to notice. *Weller v. Toke*, 9 East, 364. An excise officer is entitled to notice of action for an act *bond fide* done in the supposed execution of his duty. *Daniel v. Wilton*, 5 T. R. 1. It may be stated as a general rule, that notice is necessary in all cases in which the party had reasonable ground for supposing that he was acting in the execution, or under the authority of the particular statute. *Cook v. Leonard*, 6 B. & C. 351.

*Jervis* and *Websby* contra. The principle of the cases cited is, that where the defendant actually fills the character to which the protection extends, he is entitled to the benefit of the statute. Under the 24 Geo. 2, c. 44, the protection is given *eo nomine* to justices, and the word "person" in the 75th section of the 7 & 8 Geo. 4, c. 29, means the person previously designated in the 63rd section, namely, the "owner of the land" on which the offence is committed. If it were requisite to plead the

defence specially, the defendants could not make a good plea by alleging that they believed they were the owner of the land when in fact they were not. They cited *Jones v. Williams*, 3 B. & C. 762; *Greenway v. Hurd*, 4 T. R. 553; *Ballinger v. Farris*, 1 M. & W. 628; *Wedge v. Berkley*, 6 Adol. & E. 663; *Morris v. Smith*, 10 Adol. & E. 188; *Cann v. Clapperton*, 10 Adol. & E. 582; *Jones v. Gooday*, 9 M. & W. 736; *Bush v. Green*, 4 Bing. N. C. 41; *Lidster v. Borrow*, 1 P. & D. 447; *Rudd v. Scott*, N. C. 631.

*Pollock*, C. B. The rule must be discharged. It appears to me unnecessary to advert to the long list of cases cited. We ought to endeavour to construe the act of parliament so as to make the decisions consistent. The object of the clause was to protect persons who really and honestly believed that they acted in pursuance of the statute. Every act consists of time, place, and circumstances, and a variety of cases have decided that where a magistrate is wrong with respect to circumstances,—as where he does alone that which is required to be done by two magistrates, or where he commits for twelve months when he has only power for six months,—he is protected, provided he had a general jurisdiction. It is the same with respect to time, and I do not see why place which is a necessary ingredient in all human affairs should not be within the same rule. This statute extends its protection to all persons who act in pursuance of it, that is, *bond fide* and honestly believing themselves to be acting under its provisions. Where a person acts strictly according to the statute he does not require any protection. If the 75th clause had used similar words to the 63rd, I should have been of the same opinion, for I should have read the act as meaning that if the owner of the land, acting in pursuance of the statute, did that which was wrong with respect to time, place, or circumstances, he was entitled to notice.

*Rolfe*, B. I am of the same opinion. The statute extends to all persons against whom an action is brought for anything done in pursuance of it. The language of the 75th clause is general, and what right have we to limit it? It cannot mean literally what the words import, for in that case no notice would ever be necessary. It must be construed that any person *bond fide* acting in pursuance of the statute is within its protection.

*Parke*, B. The question turns upon the construction of the 75th section. It must be construed like all other acts of parliament, according to its ordinary grammatical sense, unless such construction would lead to manifest absurdity. The language of the clause is general, and the context shows that the words, "in pursuance of the act," are not to be read in their strict sense, because in that case no protection would be necessary, and the decided cases show that those words must be read as meaning "*bond fide* believing that they are acting within the act." Where a statute gives protection to persons of a particular character as jus-

tices or peace officers, under the 24 Geo. 2, c. 44, they must act as such in order to be entitled to the benefit of the statute. In *Hopkins v. Crowe*, the defendant could not be within the protection of the statute, because he could not have *bona fide* supposed that he acted in the character of a peace officer. In this case the jury have found that the defendants believed that they were acting under the statute.

*Hughes v. Buckland*. Easter Term, 24th April, 1846.

## PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

### House of Lords.

#### NEW BILLS.

Real Property Conveyance.—For 2nd reading. Lord Brougham.

Abolition of Deodands.—For 2nd reading. Lord Campbell. For 3rd reading.

Compensation for Accidental Deaths.—For 3rd reading. Lord Campbell.

General Registration of Deeds.—For 2nd reading. Lord Campbell.

Game Law Amendment.—Put off *sine die*. See the bill, p. 354, *ante*. Lord Dacre.

Duties of Constables, &c.—In Select Committee. See the bill, p. 311, *ante*. Duke of Richmond.

Religious Opinions Relief.—Committee. Lord Chancellor.

Charitable Trusts.—For 2nd reading. Lord Chancellor. See the bill, p. 452, *ante*.

Punishment for deterring Prosecutors, Witnesses, &c.—In Committee. See the bill, p. 472, *ante*. Lord Denman.

Real Property Burdens.—In Select Committee.

Metropolitan Buildings.—For 2nd reading. See the bill, p. 426, *ante*.

Railway Companies Dissolution.—For 3rd reading. Lord Dalhousie.

Railway Deposits.—In Committee.

Commons Inclosure.—For 3rd reading.

Insolvent Debtors' Act Amendment.—For 2nd reading. Lord Brougham.

*Real Property Registration*.

Petitions against the bill from the attorneys of Liverpool.

### House of Commons.

#### NEW BILLS.

Administration of Criminal Justice.—To be reported.

Insolvent Debtors, (India). In committee.

Bankruptcy and Insolvency.—For 2nd reading. 20th May. See the bill, p. 569, *ante*. Mr. Hawes.

Roman Catholics' Relief.—Re-committed. See the bill, p. 402, *ante*. Mr. Watson.

### Small Debt Courts:

Salford,  
Somerset,  
Northampton,  
Birkenhead. For 2nd reading.  
St. Austell. Re-committed.

Friendly Societies.—Passed. Mr. T. S. Duncombe.

Poor Removal.—In Committee. Sir J. Graham. See analysis of the bill, p. 473, *ante*.

Highway Laws Amendment.—For 2nd reading. Sir James Graham.

Corresponding Societies, Lectures, &c. Mr. T. S. Duncombe.

Metropolis Interments. Mr. Mackinnon.

Commons Inclosure.—Passed. Sir J. Graham.

## THE EDITOR'S LETTER BOX.

The new Rules and Regulations relating to the Examination and Admission of Attorneys in the Common Law Courts are stated at p. 20, *ante*. These rules vary from those of Hilary Term, 1836, in that they are founded upon and recite the act of 6 & 7 Vict. c. 73, instead of the old repealed acts; they also increase the number of examiners from 12 to 16, and require 6 instead of 3 days' notice before the term. The time during which the examiners' certificate operates is continued to two terms after the examination in lieu of one.

The rule relating to the renewal of certificates shall be given next week.

We fear there is no possibility of obtaining a fair hearing at *present* of the question of the Annual Certificate Duty. It is however of the nature of a tax upon justice, and *must* be repealed ere long.

The suggestion of examination prizes is again revived, but we still doubt the expediency of the measure.

The recommendations for the amendment of the Poor Removal Bill shall be considered.

The letter of "X. Y." on the 7 & 8 Vict. c. 96, the Bankruptcy and Insolvency Act, shall receive early attention.

A correspondent, ("V. L.," ) suggests the utility of information regarding the publication called "The Unclaimed Dividend Books of the Bank of England, &c. W. Strange, 21, Pater Noster Row," stating whether it is what it professes to be. We shall be glad to receive any hints on the subject.

# The Legal Observer.

SATURDAY, MAY 16, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## TAXES ON THE ADMINISTRATION OF JUSTICE.

THE enormous grievance of the imposts levied on the Suitors in our Courts of Law and Equity at every stage of an action or suit, at length seems likely to undergo a thorough inquiry and revision. We have done all in our power to keep the attention of all parties alive to the magnitude of the evil. During the progress of the law reforms of the last and present reigns, extending over a period of more than 15 years, we have from time to time, in season and (perhaps) out of season, urged the abolition of legal sinecures and the reduction of the fees which bar every door of justice throughout the kingdom.

Moreover, we have constantly urged, that whatever may be the proper amount of compensation to those whose offices are abolished, because they are useless, — or the proper salaries for the officers who efficiently discharge useful duties, — the compensations and salaries should all be borne on the shoulders of the state, and not of the unfortunate suitors. The due administration of the laws is an equally important duty with their wise enactment; and the judicial department ought as well to be maintained out of the public revenues as the military or any other branch of the public service.

We contend that *no fees whatever* should be exacted for paying the salaries of the judges and officers of the courts. It is admitted, indeed, that the judges of the land should be paid by the state, just as it pays its ministers, its field-marshal and admirals. We hold also, that whilst all the political affairs of government, their clerks and subalterns, are paid from the public purse, so should the judicial staff from the

Lord High Chancellor to the lowest door-keeper.

The time was when there was a plausible pretext for official fee-taking. In the old halls or offices of justice, there were stationed certain officers called *side clerks*, whose desks were arranged along these ancient entrances to the several courts, and these clerks, upon the instructions brought them by the suitors or their attorneys, actually prepared the writs and pleadings, and entered them on record. Now these things, one and all, are done by the attorneys and paid by the suitors who retain them. Why should they also pay large fees merely for marking or stamping the proceedings? a small fee might be paid at the commencement of the suit, another on entering it for trial or hearing, and a third on the judgment or decree and execution. These would be sufficient to authenticate the principal proceedings in a cause. Even now, the officer who receives the fee is not responsible for the accuracy of the process or pleading which he signs or enters. The whole responsibility rests on the attorney, who is for all these purposes an officer of the court, (though selected by the client,) and liable for mal-practice to be punished by removal from the rolls or mulcted in costs.

These remarks are called forth by the debate in the House of Commons, which took place on the 7th instant, on Mr. Watson's motion for a select committee, 1st to inquire into the nature and extent of the taxation of suitors by the collection of fees in the courts of law and equity, and into the propriety of the continuance thereof; and 2nd, to inquire into the orders for compensation made by the Lord Chancellor to the six clerks, sworn clerks, &c. under the 5 & 6 Vict. c. 103.

The first part of the motion might, in all probability, have been carried un-animously, if Mr. Watson would have accepted it. For not only the Secretary of State for the Home Department but the Prime Minister himself, most distinctly and strongly assented to the propriety of the investigation, and the latter emphatically promised the cordial concurrence of the government.

It is much to be regretted, that Mr. Watson did not accept this boon, and proceed at once to the useful and important part of the inquiry. Whether the Chancery Compensations were rightly computed or not, is a very small matter compared with the great question of fees, which amount, as we believe, to nearly a million of money annually—from which the suitors (and the practitioners who advance them) ought to be relieved. The payment of 20 or 30 thousand a year for a few years is not now worth talking about, when we are upon the great question of the taxes upon justice in all the courts throughout the empire.

Mr. *Watson*, on introducing this part of his motion, said:—

The taxation of suitors in courts of justice was a matter of the greatest importance to the public at large. The first part of his motion related to the taxation of suitors in the courts of law and equity, embracing the criminal courts and courts of quarter sessions throughout the country, and the application of the fees. The system of taxing suitors in courts of justice had only existed for some three or four centuries; but now it was universal in all courts throughout the kingdom. No suitor could resort to the Court of Chancery without being subject to very heavy taxation; and the house might be surprised when he told them, that though an attempt had been made to get rid of the system of payment by fees, there were no less than from 300 to 400 persons of the courts of law and equity who derived their emoluments from fees paid to the court or themselves. No step could be taken in any proceedings in the courts of law and equity without the payment of some fees. The house would be still more surprised when he informed them that there was no check or control on the receivers of those fees in courts of justice. In some instances an oath for the honest performance of their duty was taken by the officers; but this was only the case in some courts, and there was no really efficient check upon the persons by whom the fees were received. Some of the officers of courts of justice were paid by fees—a practice which he regarded as open to the strongest objection, and he therefore called upon the house to appoint a committee to inquire into the subject. But there was a great principle involved in this question,

and one that demanded serious consideration,—whether it was right to tax suitors at all in courts of justice? One argument used in favour of the practice was, that the object of allowing fees to be taken in courts of justice was to prevent parties from engaging unnecessarily in legal proceedings. He could assure the house that there was no reason for keeping up the system of fees on that ground, for enough of expense in the payment of lawyers and other necessary items would remain to make litigation abundantly expensive. The amount derived from fees was between 300,000*l.* and 400,000*l.* a year, and a grant was made from the consolidated fund towards defraying the expenses of the courts of law of 290,000*l.*, making the annual expense of maintaining our judicial establishments upwards of 600,000*l.* Under this system of fees, vast sums of money had been paid to persons who held sinecure offices. He thought that this monstrous system of establishing sinecures in courts of justice could not be too strongly condemned.

Sir *James Graham* said, “he should himself have entertained no objection to the first part of the motion, for he conceived that a general inquiry into the state of the fees in the courts, both of common law and equity, might very reasonably be entered into;” and after defending the compensations allowed by the Lord Chancellor, repeated at the close of his speech that “on any other occasion he would have been ready to agree to the appointment of a general committee on fees.”

Mr. *Buller* considered the case under discussion to be one on which full inquiry and an effectual report were demanded in justice to the people of England. He regretted that such a question had been mixed up with the consideration of an act, which it must be admitted was now irremediable. After dwelling on the leading points of the Chancery Compensations, and observing that the motion would tend to prevent the fuller and more general inquiry into the whole system of fees in the courts of law and equity, he expressed his delight at the assurance of the right hon. baronet, that the government was disposed to sanction the fullest inquiry into all the abuses of the system of taking fees upon litigation in this country, which was opposed to every principle of justice. Was a man who had the misfortune to be involved in litigation in the courts of law or equity, which, from the cumbrous and intricate nature of their forms, was quite expensive enough,—was he to become the subject of taxation, to pay all the expenses of that administration of justice which was for the benefit of the community at large? This was a monstrous iniquity: he wondered how it was left for him to denounce it in the year 1846, in the most civilized country in Europe. Was it just in principle that the expenses of the state should be paid out of the pockets of the citizens in

their courts of justice? They ought to strip litigation of all unnecessary expense. The administration of justice ought to be at the expense of the state. There were great objections to the system of fees on litigation, besides its general iniquity. One was the large number of persons by whom they were collected; in the Court of Chancery, 100 persons were trusted to collect 158,554*l.* per annum. They had no check upon them but an oath, and their own honour. In the common law courts it was still worse; the fee-takers there also were 100: they collected 150,000*l.* a year, and had no check at all, not even that of an oath. They took the fees that were brought to them and returned what they pleased. It was certain that 300,000*l.* a year were levied from the public; how much more they had no means of ascertaining. He made no accusation against individuals, but there was an impression abroad that the facilities thus given for abuses had been taken advantage of, and that there had been cases of persons taking fees and returning to the court only a proportion of the amount received. Whether the accusation was just or not, it was a scandal to this country that there should exist in the courts of justice a system which laid public functionaries open to a charge of this kind. It was not only the fee-takers whom this corrupt system affected injuriously. The fees were paid in small sums by persons over whom the solicitor had no check; what facilities for fraud were thus opened between the fee-payers and receivers it was utterly impossible to say. On that account he would do away with the system altogether.

The most important of all the speeches on the subject was that of *Sir Robert Peel*, whose words we shall quote verbatim from *The Times* of the 8th instant, He said—

"It is the earnest wish of the government that there should be an effectual inquiry into the mode in which the officers of courts of justice are paid, by means of fees, for the purpose of ascertaining the opinion of the house, and of establishing a permanent check by the house against the future and undue increase of those fees. So much for the present; and as to the future, I cannot but think that the house ought to adopt the same course. I well recollect, when I was Secretary of State for the Home Department, my impressions with respect to compensations for loss of offices, and before I entered that department, when I was chief secretary to the Lord-Lieutenant of Ireland, I recollect I was much impressed with the magnitude of the abuse, and I was always afraid, when you were making compensation for offices, you did little good if you did not make provision against the future levy of fees. But I must say that as far as my experience goes, it is utterly impossible to obtain any real reform unless you act liberally towards those who hold the offices; and it has been well observed by an hon. gentleman,

in a speech which shows that the house may expect much information from him, that if you apply to the parties interested for information, and who could give you most important information, you never would receive it if there was a strong impression upon the minds of those gentlemen that you would act with nigardliness or illiberality towards them; and the house has always manifested a desire to act with liberality towards vested interests. I must say, with respect to the system of persons receiving from offices in courts of justice incomes which you do not give to officers with the highest responsibility, which you do not give to judges, or to ministers, and to other high functionaries, I do not hesitate to say it is a great abuse to allow such large incomes to be paid to subordinate officers by suitors for justice. At the same time, I do not think it would be proper to hold out a prospect of the proposition of the honourable and learned member for Liskeard being acceded to, and say that the total amount of the expense of litigation should be paid by the public. I am afraid this would lead to a greater evil, and if any person who thought he had a claim were to be able to maintain it at the expense of the public, I am afraid it would give a dangerous encouragement to litigation; and I put it to the house, if the whole expense of litigation were to be defrayed out of the public purse, whether I should not be justified in despairing of the treasury being able to bear the burden. So far as respects future cases of compensation for loss of offices; with regard to the amount of compensation, I, on the part of government, am aware of no objection to the most effectual inquiry, and I have no hesitation in giving an assurance that *government will be prepared to cause such inquiry to be instituted in future.*"

Whilst we rejoice in receiving this distinct promise from the Prime Minister, which gives assurance that a large portion of the fees will be reduced—by means, we presume, of transferring the salaries of judges and some other high officers from the fee to the consolidated fund,—we hope the matter will not stop there; but that ultimately the suitor will be relieved from all official fees whatever, whether in the way of salary for the future or compensation for the past.

The notion that litigation would increase improperly, if the fees were abolished, is founded on a very extraordinary mistake. No one proposes that in civil proceedings, as in criminal, the suitors should be paid all their costs and expenses. We ask only that the large and frequent tolls exacted on the road to the court should be abolished. The suitors are willing to pay for the carriage of the cause, for their own expenses, and their



witnesses, their counsel and attorneys. Surely the charges for the attorney's services, and the fees paid to counsel, and the loss of time and expenses of witnesses, will ever be a sufficient barrier against excessive, or the temptation of improper litigation.

Besides, when the government appears to be yielding to the partial outcry for cheap law, and carrying it to every man's own door, it is very inconsistent to hesitate in abolishing these exactions, lest litigation should increase! Surely the very purpose of local courts is to afford facilities in the prosecution of claims, and yet whilst the worst kind of litigation is thus encouraged, on the pretext that the superior courts are too expensive, the diminution of the burdensome fees in these courts is opposed, because it will tend to increase the number of suitors. Further discussion, we trust, will set the question in its true light.

It is well remarked in *The Times* of the 8th inst. that

"It is usual to lay the blame entirely on the shoulders of the profession, and naturally enough, since the attorney's bill contains, besides his own charges, all the fees he has advanced on his client's account. The suitor looks only at the sum total, and confounds the whole together; but if he will read the items, he will find that not a few of them are tribute paid to the officers of the court. We are not prepared to say that all charges upon the administration of justice ought to be abolished, but it is clear that the fees at present exacted are beyond all measure exorbitant. It is quite enough to look at the large incomes that have been derived from them by a whole host of masters, and registrars, and clerks, to form a pretty just estimate of the tax imposed upon the suitor. This tax, it must not be forgotten, still continues. In abolishing some offices and reducing the emoluments of all, the fees, it is needful to observe, are neither abolished nor reduced. They will still be paid, and, under the present system, must be paid, to form a fund for the payment of the salaries. The public, therefore, has gained nothing by the recent alterations, of which we have heard so much. Their relief is to come, and Sir Robert Peel pledged himself last night that it shall come."

#### ATTORNEY'S AND SOLICITOR'S ACT.

#### CONNEXION OF LETTERS, WITH BILL OF COSTS INCLOSED THEREIN.

The stat. 7 & 6 Vict., c. 73, s. 37, requires that, at least a month before the

commencement of an action, a bill of costs shall have been delivered to "the party to be charged therewith," or sent by post to, or left for him at, his counting-house, office of business, &c., which bill shall either be subscribed with the proper hand of such attorney, "or be inclosed in or accompanied by a letter subscribed in like manner referring to such bill."

The question whether there had been a sufficient compliance with this provision of the statute, arose in a case lately reported,\* and determined by Mr. Justice Wightman, whilst sitting in the Bail Court. The costs were incurred in respect of the estate of an insolvent named Hiles, and the bill was forwarded (through the post-office) by Mr. Taylor, a London attorney, to Mr. Hodgson, an attorney in the country, headed—"Assignee's costs, not taxed up to the filing the last account." The bill was inclosed in a letter in these terms:—"Re Hiles. Dear Sir,—I herewith beg to send you the bill of costs herein, and shall be obliged by your sending me a cheque for 20*l.*, which will be about my charges, in the most troublesome and disagreeable business I ever had, &c. Yours truly, George H. Taylor. To R. H. Hodgson, Esq.," &c.

The objection taken at the trial, and subsequently urged in support of a rule for a new trial was, that under the 6 & 7 Vict. c. 73, s. 37, the name of the party sought to be charged should appear on the face of the bill itself, that the bill sent in this case had no heading from which it would appear that the defendant was the party chargeable, and that the accompanying letter could not be looked at to supply the defect by connecting the bill with its contents. On the other hand it was urged, that the words "to be charged therewith," in the 37th section, do not necessarily import that the bill itself was to contain evidence of the fact, which might be gathered from the letter in which the bill was inclosed.

Mr. Justice *Wightman*, after taking time for consideration, was of opinion, that the letter taken in connection with the bill, left no doubt as to the person charged. The only question therefore was, whether the plaintiff was entitled to read the letter and the bill together, to show who was the party charged? The 37th sect. enabled the plaintiff to connect the letter and the bill, if the latter was referred to, to show

\* *Taylor v. Hodgson*, 3 Dowl. & L. 115.

that there was a sufficient signature, and it seemed to him sufficient under the act, if the bill and the letter together showed who was the person to be charged.<sup>b</sup> The rule for a new trial was therefore discharged.

## LEADING CASES IN CONVEYANCING.

SOME of the old leading cases, still in full force, and exercising an important sway on the present practice, are familiarly known by name, but their precise effect, with the subsequent decisions, are not remembered or easily referred to, and yet are very material both to the practitioner and the student. We purpose, therefore, to make a selection from these cases, and for the present shall take those which relate to the Law of Property and Conveyancing, and probably follow them by others on Equity and Common Law. Some leading Statutes with Notes may proceed contemporaneously.

We commence with one of very general applicability in leasehold transactions, viz. :—*Dumpor's case*, at which Lord Mansfield said, (4 Taunt. 736,) “the profession had always wondered, but it had been the law so many centuries, that they could not now reverse it;” and Lord Eldon (14 Ves. 173) observed, “that though *Dumpor's case* always struck him as extraordinary, it was the law of the land.”

After stating the case itself, from Serjeant Wilson's Edition of Coke's Reports, we shall give the points decided in all the other cases bearing on the subject in chronological order.

### DUMPOR'S CASE.

Hil. 45 Eliz., in the King's Bench. Coke's Reports, part 4, p. 119.

*A condition not to alien without licence, is determined by the first licence.*

In trespass between *Dumpor* and *Symms* upon the general issue, the jurors gave a special verdict to this effect:—the president and scholars of the College of Corpus Christi, in Oxford, made a lease for years in anno 10 Eliz., of the land now in question, to one *Bolde*: proviso that *the lessee or his assigns should not alien the premises to any person or persons, without the licence of the lessor*. And afterwards the lessors by their deed, anno 13 Eliz., licensed the lessor to alien, or demise the land, or any part of it, to any person or persons *quibuscun-*

*que*. And afterwards, anno 15 Eliz., the lessee assigned the term to one *Tubbe*, who by his last will devised it to his son, and by the same will made his son executor and died. The son entered generally, and the testator was not indebted to any person, and afterwards the son died intestate, and the ordinary committed administration to one who assigned the term to the defendant.<sup>b</sup> The president and scholars, by warrant of attorney, entered for the condition broken, and made a lease to the plaintiff for 21 years, who entered upon the defendant, who re-entered, upon which re-entry this action of trespass was brought: and that upon the lease made to *Bolde*, the yearly rent of 33s. 4d. was reserved, and upon the lease to the plaintiff, the yearly rent of 22s. was only reserved. And the jurors prayed upon all this matter the advice and direction of the court, and upon this verdict judgment was given against the plaintiff. And in this case divers points were debated and resolved:—1st. That the alienation by licence to *Tubbe* had determined the condition, so that no alienation which he might afterwards make could break the proviso, or give cause of entry to the lessors, for the lessors could not dispense with an alienation for one time, and that the same estate should remain subject to the proviso after. And although the proviso be, that the lessee or assigns shall not alien, yet when the lessors licence the lessee to alien, they shall never defeat, by force of the said proviso, the term which is absolutely aliened by their licence, inasmuch as the assignee has the same term which was assigned by their assent: so if the lessor dispense with one alienation, they thereby dispense with all alienations after; for inasmuch as by force of the lessor's licence and of the lessee's assignment, the estate and interest of *Tubbe* was absolute, it was not possible that his assignee who has his estate and interest shall be subject to the condition: and as the dispensation of one alienation is the dispensation of all others, so it is as to the persons, for if the lessors dispense with one, all the others are at liberty. And therefore it was adjudged, Trin. 28 Eliz. Rol. 256, in Com. Banco inter *Leeds* and *Crompton*, that where the Lord Stafford made a lease to three, upon condition that they or any of them should not alien without the assent of the lessor, and afterwards one alienated by his assent, and afterwards the other two without licence, and it was adjudged, that in this case the condition being determined as to one person, (by the licence of the lessor,) was determined in all. And *Popham*, Chief Justice, denied the case in 16 Eliz. *Dyer*,<sup>c</sup> 334; that if

<sup>b</sup> See 3 Wilson, 234.

<sup>c</sup> 1 Roll. Rep. 70, 390; 1 Roll. 422, 471; 2 Bulst. 291; Cro. Jac. 398; 3 Co. Pennant's case; 3 Ed. 6 *Dyer* 66, a.

<sup>d</sup> 1 Roll. 472; Cro. El. 816; Goodb. 93; Noy, 32; 4 Leon. 59; 2 Bulstr. 291.

<sup>e</sup> Styles, 317.

<sup>f</sup> Dy. 334, pl. 32; Cro. El. 816; Styles, 331; Moor, 205.

<sup>b</sup> It seems to have been overlooked in this case, both in the argument and judgment, that as the bill was for agency business, the plaintiff was not bound to deliver a signed bill, &c. See *in re Gedge*, Leg. Obs. vol. 30, p. 45; 2 Dowl. & L. 915.

<sup>a</sup> Co. Ent. 684, pl. 22; Cr. El. 815, 816.

a man leases land upon condition, that he shall not alien the land, or any part of it, without the assent of the lessor, and afterwards he aliens part with the assent of the lessor, then he cannot alien the residue without the assent of the lessor: and conceived, that is not law, for he said, the condition could not be divided or apportioned by the act of the parties; and in the same case, as to parcel which was alienated by the assent of the lessor, the condition is determined; for although the lessee aliens any part of the residue, the lessor shall not enter into the part aliened by licence, and therefore, the condition being determined in part, is determined in all. And therefore the Chief Justice said, he thought the case was falsely printed, for he held that it was not law. *Nota reader Paschæ*, 14 Eliz. Rol. 1015, in *Com. Banco*, that where the lease was made by deed indented for 21 years, of three<sup>a</sup> manors, *A. B. C.*, rendering rent, for *A. 6l.* for *B. 5l.* for *C. 10l.* to be paid in a place out of the land, with a condition of re-entry into all the manors, for default of payment of the said rents, or any of them, and afterwards the lessor by deed indented and enrolled, bargained and sold the reversion of one house and 40 acres of land, parcel of the manor of *A.* to one and his heirs, and afterwards by another deed indented and enrolled, bargained and sold all the residue to another and his heirs, and if the second bargainee should enter for the condition broken or not was the question; and it was adjudged, that he should not enter for the<sup>1</sup> condition broken, because the condition being entire, could not be apportioned by the act of the parties, but by severance of part of the reversion it is destroyed in all. But it was agreed, that a condition may be<sup>a</sup> apportioned in two cases,—1. By act in law; 2. By act and wrong of the lessee. By act in law, as if a man seised of two acres, the one in fee, and the other in<sup>1</sup> borough English, has issue two sons, and leases both acres for life or years, rendering rent with condition, the lessor dies, in this case by this descent, which is an act in law, the reversion, rent, and condition, are divided. 2. By act and wrong of the lessee, as if the lessee makes a feoffment of part, or commits waste<sup>2</sup> in part, and the lessor enters for the forfeiture, or recovers the place wasted, there the rent and condition shall be apportioned, for none shall take advantage of his own wrong, and the lessor shall not be prejudiced by the wrong of the lessee; and the Lord Dyer, then Chief Justice of the Common Pleas, in the same case said, that he who enters for a condition broken, ought to be in of the same estate which he had at the time of the condition created, and that he cannot

have, when he has departed with the reversion of part, and with that reason agrees, *Litt.* 80, b.; and vide 4 & 5 Ph. & Mar. Dyer,<sup>a</sup> 152, where a proviso in an indenture of lease was, that the lessee, his executors or assigns, should not alien to any person without licence of the lessor, but only to one of the sons of the lessee; and the lessee died and his executor assigned it over to one of his sons, it is held by Stamford and Catlyn, that the son might alien to whom he pleased without licence for the condition, as to the son, was determined, which agrees with the resolution of the principal part in the case at bar. 2. It was resolved, that the statutes of 13 Eliz. c. 10, and 18 Eliz. c. 11, concerning leases made by deans and chapters, colleges, and other ecclesiastical persons, are<sup>o</sup> general laws whereof the court ought to take knowledge, although they are not found by the jurors, and so it was resolved between Claypole and Carter in a writ of error in the King's Bench.

There was a still earlier case than *Dumpor's*, where it was held, that a proviso that a lessee shall not alien his term without the lessor's consent, is a condition precedent; and devising it is a breach. *Knight v. Mory*, Cro. Eliz. 60. Michaelmas Term, 29 and 30 Eliz. (1578.)

From *Dumpor's* case we meet with no other decision till 1771, when it was determined that a covenant not to assign, transfer, set over, or otherwise do or put away the lease or premises, does not extend to an under lease for part of the term. *Crusoe d. Blencowe v. Rugby*, 2 Bla. 776; S. C. 3 Wills. 234; T. T. 11 Geo. 3.

The next case was decided May 19, 1778, viz.:—If lessee covenant not to under-let without the consent of the lessor under hand and seal, with a power of re-entry in case of breach; acceptance by the lessor of rent due after the condition broken with full notice, is a waiver of the forfeiture. *Goodwright ex dem. Walter v. Davids*, 11 Cowper, 803.

In April 25, 1788, we find the following:—If a lease contain a proviso that the lessee and his administrator shall not set, let or assign over, the whole or part of the premises without leave in writing, on pain of forfeiting the lease, the administratrix of the lessee cannot under-let without incurring a forfeiture. A parol licence to let part of the premises does not discharge the lessee from the restriction of such a proviso, the lessor's receiving rent after the forfeiture is no waiver unless the forfeiture were known to him at the time. *Roe on the demise of Gregson, widow, v. Harrison*, 2 Term. Reports, 425.

This was followed, on the 4th May, 1791, by a case in which it was held, that executors may

<sup>a</sup> Co. Lit. 215, a.

<sup>b</sup> Dyer, 308, 309, pl. 75; 5 Co. 55, b.; Moor 97, 98.

<sup>1</sup> Co. Lit. 215, a.; Cro. Jac. 390; 5 Co. 55, b.

<sup>2</sup> 3 Bulstr. 154; Co. Lit. 215, a.

<sup>1</sup> 1 Rol. Rep. 331; Co. Lit. 215, a.

<sup>2</sup> 1 Rol. Rep. 331; Moor, 203.

<sup>a</sup> Dy. 152, pl. 7; Co. Lit. 315, a.; Cro. Eliz. 757, 816.

<sup>o</sup> Ante, 76, a.; 2 Rol. 465; Yelv. 106; Doct. pl. 337, 338; Noy, 124; 2 Brownl. 208; Cro. El. 816; Moor, 593; 1 Lion. 306, 307.

dispose of a lease for years as assets, notwithstanding a proviso or covenant that the lessee shall not alien. Testator may provide, that in case of a devolution to executors, they shall not alien; but it must be very special. *Seers v. Hind*, 1 Vesey, jun. 295.

Then in Nov. 1798, where a lessee who had covenanted not to let, set, assign, transfer over, barter, exchange, or otherwise part with the indenture, &c., with a proviso that the landlord might in such case re-enter, give a warrant of attorney to confess judgment, on which the lease was taken in execution and sold; it was held no forfeiture of the lease. *Doe d. Mitchinson v. Carter*, 8 T. R. 57.

The following cases are from the last date to 1811, inclusive:

*A.* gave by his will, his tenant-right, which he held by lease to *A.*, but not to dispose of or sell it; and if he refused to dwell there, or keep it in his own possession, then that *I.* should have his tenant-right of the farm. *A.* having borrowed money, left the title-deeds with his creditor as a security, and confessed a judgment to secure the money; and having also given a judgment to another creditor who issued an execution against him, the sheriff sold the lease to the creditor with whom the deeds were deposited, he paying the debt of the plaintiff in the execution, and *A.* having left the premises and ceased to dwell there on the day of execution before the sheriff entered; *Held*, that *I.*, the remainderman was entitled to enter, the estate of *A.* having determined by such his acts. *Doe d. Duke of Norfolk and Ibbotson v. Hawke*, 2 East, 481. June 29, 1802.

Proviso against assignment without licence in a lease to the lessee, his executors, administrators and assigns, not repugnant: the construction being such assigns as he may lawfully have, viz., by licence, or by law as assignees in bankruptcy. Though bankruptcy supercedes an agreement not to assign without licence, that has been held only in favour of general creditors; and where there is no actual lease, but it rests in agreement to grant a lease, an indenture cannot have a specific performance in opposition to such provision; and it is very disputable, whether the general assignees could obtain it, even if there was no such provision. *Weatherall v. Geering*, 12 Ves. jun. 504. May 22, and July 30, 1806.

Covenant in a lease not to let, set, or demise the premises or any part, for all or any part of the term without consent, restrains assignment. Vendor upon objection to the title sold to another after notice, that she would do so if the title was refused under a bill for specific performance, or an issue or reference to ascertain the loss of the first purchase, a reference was directed upon the authority of *Denton v. Stuart*. As to the principle, *quare*. *Greenaway v. Adams*, 12 Vesey, 395. May 12 and 13, 1806.

Where one leased for 21 years, if the tenant, his executors, &c. should so long continue to inhabit and dwell in the farm-house, and actually occupy the lands, &c., and not let, set, assign over, or otherwise depart with the lease:

*Held*, that the tenant having become bankrupt, and his assignees having possessed themselves of the premises and sold the lease, and the bankrupt being out of the actual possession and occupation of the farm, the lessor might maintain ejectment without a previous re-entry, the continuance of the term itself being made to depend upon the lessor's actual occupation. *Doe d. Lockwood v. Clarke*, 8 East, 185. June 28, 1807.

Proviso in a lease for re-entry upon assignment by the lessee, his executors, administrators or assigns, without licence, ceases by assignment with licence, though to a particular individual. *Brummell v. Macpherson*, 14 Vesey, 173. July 25, 1807.

Relief against forfeiture of a lease for breach of covenant not extended beyond the case of payment of money, as in the instance of rent, to the other covenants, as to repair. Stat. 4, G. 2, c. 28, regulating the relief of a tenant against a forfeiture for breach of covenant by nonpayment of rent. The ground in *Hack v. Leonard*, (9 Mod. 91,) for relief against breach of covenant to repair, if not such as to make repair before the end of the term impracticable, —disapproved. Tenant having committed breaches of covenant by waste, treating the land in an unhusband-like manner, &c., not entitled to a specific performance of an agreement for a lease. No relief against forfeiture by breach of covenant not to assign without licence. *Hill v. Barclay*, 18 Vesey, jun. 63. April 30, and May 13, 1811.

Several cases occurred in 1813, viz:—

Covenant not to assign without licence once dispensed with, the condition is gone, both in law and equity; but the principle questionable, and not to be extended, for instance, to a mere act, where the licence is to be in writing. *Macher v. The Foundling Hospital*, 1 Vesey & Beames, 191. Feb. 3, 1813.

A lessor who has a right of re-entry reserved on breach of a covenant not to under-let, does not by waiving his re-entry on one under-letting, lose his right to re-enter on a subsequent under-letting. Nor by waiving his right to re-enter on a breach of covenant to repair does he waive his re-entry on a subsequent want of repairs. *Doe d. Boscawen v. Bliss*, 2 Taunton, 735. Feb. 9, 1813.

Where a lease contained a proviso for re-entry in case the tenant should demise, lease, grant, or let the demised premises, or any part or parcel thereof, or convey, &c. to any person whomsoever, for all or any part of the term, without the licence of the lessor in writing; and the defendant without such licence agreed with a person to enter into partnership with him, and that he should have the use of the back chamber and some other parts of the premises exclusively, and of the rest jointly with the defendant, and accordingly let him into possession: *Held*, that the lessor was entitled to re-enter. *Doe d. Dingley v. Sales*, 1 Maule & Selwyn, 297. May 8, 1813.

If the vendor of a lease, in which is a covenant not to assign, contract to assign his inter-

est, it is incumbent on him, and not on the purchaser, to procure the lessee's licence for the assignment. If a covenant not to assign contain an exception in favour of assignment by will; *Semble*, that executors claiming the will are not within the exception, so as to be at liberty to sell for payment of debts without licence of the lessor. *Lloyd v. Crispe*, 5 Taunton, 249. Nov. 23, 1813.

The following decisions carry the question down to 1821:

Injunction refused against a verdict in ejectment upon a breach of covenant by lessee for years as to the mode of cultivation if admitting relief; the defendant having been prevented from proving other breaches, against which no relief could be had, as by assigning without licence. *Lowat v. Lord Ranclagh*, 3 Vesey & B. 24. June 11th, 16th, and 20th, 1814.

Demise for years to S., and S., covenants that he, his executors, administrators, or assigns, would not assign the indenture, or his or their interest therein, or assign the premises to any person whatsoever, without the consent in writing of the lessor. Proviso, that in case S., his executors, administrators, or assigns, should part with his or their interest contrary to his covenant, that lessor might re-enter. S. deposited the lease as a security for money borrowed, and became bankrupt, and the lease was sold, by direction of the chancellor, to pay the debt. *Held*, that the assignees under the commission might assign the lease to vendee without consent of lessor. *Doe d. Goodbehare v. Bevan*, 3 M. & S. 353; January 23rd, 1815.

Lease for years by indenture rendering rent, and lessee covenants with lessor that he will pay the rent, and will not assign without leave of lessor, provided that if the rent be in arrear, or if all or any of the covenants hereinafter contained on part of the lessee shall be broken, it shall be lawful for lessor to re-enter; and there were no covenants on the part of lessee after the proviso, but only a covenant by lessor that lessee paying, &c., performing all and every the covenants hereinafter contained on his part to be performed, &c., should quietly enjoy; *held*, that lessor could not re-enter for breach of the covenant not to assign, for the proviso is restrained by the word "hereinafter" to subsequent covenants, and though there were none such, yet the court could not reject the word. *Doe d. Spencer v. Godwin*, 4 Maule & S. 265. June 5, 1815.

Proviso in a lease, that lessees should not demise the premises without a licence in writing. A parol licence to underlet is insufficient; but if such licence is given as a snare, and under circumstances of fraud, this court will relieve. *Richardson v. Evans*, 3 Maddocks, 218. May 2, 1818.

From 1821 to 1830 inclusive, we find the following points determined.

Bequest to trustees in trust to pay C. H. an annuity during his life, provided that if C. H. should by any way or means whatsoever sell, dispose of, or encumber the right, &c., he

might have for life, then his interest to cease, and the trustees to apply the same for the benefit of his children. *Held*, that, on the bankruptcy of C. H., his interest ceased, and his children became entitled. *Cooper v. Wyatt*, 5 Maddocks, 482. February 23rd, 1821.

Covenants in a lease not to let, set, assign, transfer, set over, or otherwise part with the premises thereby demised, or that present indenture of lease: *Held*, that a deposit with a creditor as a security for money advanced was not a parting with, within the meaning of the covenant. *Doe d. Pitt v. Laming*, Ry. & Moo. 36. February 27, 1824.

Covenant not to let, set, assign, transfer, set over, or otherwise part with the premises demised, or the "lease" of a coffee-house is not broken by proof of a deposit of the lease with the brewers of lessee as a security for beer supplied to the house. *Doe d. Pitt v. Hogg*, 4 D. & R. 226. May 10, 1824.

Lease contained a proviso for re-entry of lessor, and that lease should be void on lessor assigning without licence. Lessee, in January 1825, conveyed all his real and personal estate for benefit of creditors. In April 1825 commission of bankruptcy issued against him: *Held*, that assignment was an act of bankruptcy and void, and was, therefore, no forfeiture of lease, and it passes to assignees. *Doe d. Lloyd v. Powell*, 5 B. & C. 308; S. C. 8 D. & R. 35. H. T. 1826.

In an agreement enuring as a lease, it is stipulated and conditioned that lessee shall not underlet; *Held*, that these words create a condition, upon a breach of which lessor may maintain ejectment without an express clause of re-entry. *Doe d. Henniker v. Watt*, 1 Man. & R. 694. Hilary Term, 1828.

The cases from 1830 are as follow:

A lease having been granted on condition that if the lessee contracted a debt he should be sued to judgment, which should be followed by execution, the lessor should re-enter as of his former estate, and the lessee having re-entered after a judgment and execution: *Held*, he was entitled to the emblements. *Davies v. Eytton*, 7 Bing. 154. November 25, 1830.

Ejectment may be maintained for freehold lands on the demise of a person attainted of felony, when there has been no office found on behalf the king. A lease for three lives contained a proviso, that if the lessee, his heirs, &c., should, during the continuance of the term, happen to become insolvent, and unable in circumstances to go on with the management of the farm, the demise should from thenceforth cease and be absolutely void. Tenant (being the second *cestui qui vie*) under such lease was attainted of felony, and transported. His mother and sister occupied the farm from that time till the expiration of the third life named in the lease, and during that period the reserved rent was regularly paid to R. W. P., to whom the reversion had come by devise, and who knew all the facts. The time of his becoming entitled did not appear. The

reversioner, on the expiration of the third life, supposing that the term was at an end in point of law, let the land to a new tenant, whom he afterwards ejected, the attainted party being still alive. *Quære*, whether the attaintor of the tenant was a forfeiture of the lease, but held that if it was a breach of the condition, it was not a continuing breach, but was contemporaneous with the conviction: *Quære*, also, if a forfeiture was committed, whether it was one of which an assignee of the reversion might take advantage by stat. 32, H. 8, c. 34. *Held*, that if such a forfeiture was committed, the reversioner had waived it by accepting the reserved rent under the lease from the parties occupying the premises: *Semble*, that if the forfeiture had not been waived, a sufficient entry had been made to avoid the lease. *Doe d. Prichard*, 5 Barn. & Ad. 765. Michaelmas Term, 1833.

Premises were let for twenty-one years to A., his executors, administrators, and assigns, with a proviso, that if the lessee, his executors, administrators, or assigns, should become bankrupt or insolvent, or suffer any judgment to be entered against him, &c., by confession or otherwise, or suffer any extent, process, or proceedings to be had or taken against him, whereby any reasonable probability might arise of the estate being extended, &c., the estate should determine, and the lessor have power to re-enter. Before the term ended, the lessee died, and by will bequeathed the premises held under this demise to his executors on trust for (testator's) widow; one executor died, and the survivor became bankrupt. *Held*, that the lessor had a right to re-enter, which he might enforce by ejectment. 5 *Tyrrhitt's Reports*, 125, Michaelmas Term, 1834.

A forfeiture of a lease, accruing on the lessee's insolvency, is waived by acceptance of rent from him after his discharge under the Insolvent Debtors' Act; and the non-payment of a debt, specified in his schedule to be due to the lessor, is not a continuing insolvency to constitute a new forfeiture after such acceptance of rent. *Doe d. Gatehouse v. Rees*, 4 Bing. N. C. 384. April 21, 1835.

[We have sought throughout the recent Reports and Indices, but find no later case of importance than those above cited.]

## NEW RULES OF THE COMMON LAW COURTS.

### RENEWAL OF ATTORNEYS' CERTIFICATES.

*Easter Term, 1846.*

Whereas, by section 25 of the stat. 6 & 7 Vict., c. 73, it was enacted, that if any attorney shall neglect to procure an annual stamped certificate, authorizing him to practise as such within the time by law appointed for that purpose, then and in such case the registrar of attorneys and solicitors shall not afterwards grant a certificate to such attorney without the

order of one of the Courts of Queen's Bench, Common Pleas, or Exchequer, or of one of the judges thereof, to issue such certificate.

And whereas, it is expedient that upon the application of an attorney, having neglected for the space of one whole year to procure or renew an annual stamped certificate, the judges should have means of inquiring as to the circumstances under which he has omitted to commence, or has discontinued to practise, and as to his conduct and employment during the term of such omission or discontinuance.

It is ordered that from and after the last day of Trinity Term next, every person who shall intend to apply on the last day of term, or in vacation for such order, shall three days at the least previous to the first day of the term, on the last day of which the application is intended to be made, or in case the application is to be made in vacation, shall, previous to the first day of the preceding term, leave at the office of the masters of the court in which he intends to make the application, a notice in writing, containing his name and place of abode for the last preceding twelve months. And that before the said first day of term, he shall enter, or cause to be entered, a like notice in two books kept for that purpose, one at the chambers of the Lord Chief Justice or Chief Baron, the other at the chambers of the other judges or barons, and shall, before the said first day of term, cause to be filed the affidavit upon which he seeks to obtain or renew his said certificate at the office of the masters aforesaid, and a copy thereof to be also left at the chambers of the Lord Chief Justice of the Court of Queen's Bench.

And it is further ordered, that the masters reduce such notices into alphabetical order, and add the same to the list of admissions, and the order for the granting the certificate shall be drawn up on reading such affidavit of such copy, having been left in compliance with this rule.

Denman.	T. Colman.
N. C. Tindal.	R. M. Rolfe.
Fred. Pollock.	Wm. Wightman.
J. Parke.	C. Cresswell.
E. H. Alderson.	W. Erle.
J. Patteson.	T. J. Platt.
J. Williams.	

The rule of Hilary 1836, relating to the re-admission of attorneys, is thus made applicable after next term to the renewal of certificates. Since the 6 & 7 Vict., c. 73, which repealed the clause of the Stamp Act, rendering admissions void where the certificate was not taken out for more than twelve months, many applications were made at the judges' chambers without giving the usual notice before term. There is the same reason for a notice to renew as to re-admit, and the judges have accordingly made this order, and extended it to cases where the party commences taking out his certificate more than twelve months from admission.

## APPOINTMENT OF EXAMINERS.

*Easter Term, 9 Vict., 1846.*

It is ordered that the several Masters for the time being of the Courts of Queen's Bench, Common Pleas and Exchequer respectively, together with Robert Riddell Bayley, Edward Smith Bigg, Thomas Clarke, John Coverdale, Alexander William Grant, John Swarbrick Gregory, George Herbert Kindeley, Edward Lawford, William Lowe, Thomas Metcalfe, Edward Leigh Pemberton, Edward Rowland Pickering, John Innes Pocock, John James Joseph Sudlow, Robert Whitmore, and Thomas Wing, gentlemen, attorneys-at-law, be and the same are hereby appointed examiners for Trinity and Michaelmas Terms next, to examine all such persons as shall desire to be admitted attorneys of all or either of the said courts; and that any five of the said examiners (one of them being one of the said Masters) shall be competent to conduct the said examination, in pursuance of and subject to the provisions of the rule of all the courts made in this behalf in Easter Term, 1846.

## BY THE COURT.

Approved by the Court of Queen's Bench.  
Approved by the Court of Common Pleas.  
Approved by the Court of Exchequer.

## NOTES ON THE RULES FOR EXAMINATION AND ADMISSION OF ATTORNEYS.

We were enabled last week to lay before our readers the new rules relating to the examination and admission of attorneys. We now add the rules regarding the renewal of annual certificates and appointment of examiners.

The alterations made by these rules are as follows:

1. In lieu of the recital of the old acts of Henry 3, James 1, and Geo. 2, which were repealed by the 6 & 7 Vict., c. 73,\* the 15th and 16th clauses of that act authorizing and directing the examination are stated.

2. The examiners are increased from twelve to sixteen, so that, besides the master, (who is to preside as usual,) there will be four examiners for each of the four terms.

3. Under the former rules, the examiners' certificate entitled the candidate to admission in the same or the next following term only, unless enlarged by the order of a judge. By the 1st section of the new rules, the time is extended to *the term next but one following the examination*.

It was suggested to the judges that the

notice of admission to be served on the master should be six days instead of three before the term, in order to allow more time for preparing the printed lists; but the judges, no doubt, properly considering the inconvenience of a change of practice, have continued the former rule, under which three days' notice at least are to be given. The fifth section of the rule at p. 21 should, therefore, be three instead of six days.

## LORD BROUGHAM'S SHORT FORM CONVEYANCING BILL.

THIS bill which has just been printed "to facilitate the Conveyance of Property," recites the 8 & 9 Vict. cc. 119 and 124, and states, that it is expedient further to facilitate the Conveyance of Property: It is therefore proposed to enact,

1. That when and so often as any deed, will, or instrument in writing expressed to be made in pursuance of this act, or referring thereto, shall contain any of the forms of words in column I. of the schedule hereto annexed, distinguished by any number prefixed thereto, such deed, will, or instrument in writing shall, whether the same number be inserted therein or not, be taken to have the same effect and be construed as if there had been inserted therein the form of words contained in column II. of the said schedule and distinguished by the same number as is prefixed to the form of words so employed; and the like provisions shall apply to the said forms as altered by virtue of the directions contained in the schedule hereto.

2. That in taxing any bill for preparing any deed, will, or instrument in writing expressed to be made in pursuance of this act, or referring thereto, it shall be lawful for the taxing officer and he is hereby required, in estimating the proper sum to be charged for such transaction, to consider, not only the length of such deed, will, or instrument in writing, but also the skill and labour employed and responsibility incurred in the preparation thereof.

3. That if the taxing officer, after this act shall have come into operation, shall be of opinion that the expense attending the preparation of any deed, will, or instrument in writing referred to him for taxation has been unnecessarily increased by not employing the forms contained in the first column of the schedule hereto, or any of them, then such taxing officer may in his discretion disallow so much of the charge for such deed, will, or instrument in writing as has been thus unnecessarily incurred.

4. That it shall be lawful for the Lord High Chancellor of Great Britain and of Ireland respectively, or the Lords Commissioners or Keepers of the Great Seal respectively, with the advice and assistance of the Master of the Rolls of England and Ireland respectively, from time to time, if they shall think proper,

\* At page 20 the act is referred to as c. 93 instead of 73.

to make such orders and provisions as they may think proper respecting the mode of professional remuneration for any deed, will, or instrument in writing expressed to be made in pursuance of this act or referring thereto.

5. That no deed, will, or instrument in writing, or part of any deed, will, or instrument in writing, expressed to be made in pursuance of this act or referring thereto, shall fail to take effect thereunder in consequence of any error in copying the forms contained in column I. of the said schedule; and that any deed, will, or instrument in writing, or any part thereof, which shall fail to take effect under this act, shall nevertheless be as valid and effectual as if this act had not been made.

6. That the said schedule, and the directions and forms therein contained, shall be deemed and taken to be parts of this act.

7. That the provisions herein contained shall extend and be applied to all deeds made or to be made under the said recited acts or either of them.

8. That this act shall commence and take effect from and after the first day of October One thousand eight hundred and forty-six.

9. That this act shall not extend to Scotland.

## DEBATE IN PARLIAMENT ON THE CHANCERY COMPENSATIONS.

We have noticed in a separate article so much of this debate as we consider of *permanent* interest, touching the taxes on the administration of justice; and shall here state the substance of the discussion, on the 7th inst., on the compensations granted to the six clerks, sworn clerks, clerks of enrolments, agents, &c., on the abolition of the six clerks' office.

Mr. *Watson*, after treating of the general question of the fees of court, said—

“The stat. 5 & 6 Vict., c. 103, known as the Six Clerks Act, abolished the offices of clerk of the enrolments, controller of the hanaper, the six clerks, sworn clerks, and waiting clerks in the Court of Chancery, and provided that compensation should be given to the persons filling those offices. Those clerks had always been considered a nuisance—they were not of the slightest benefit. The offices were old, it was true, but the principal duty of those who held them consisted in exacting fees from the suitors; and he could not conceive on what ground the enormous compensation to which he was about to call the attention of the house had been awarded to them under the Six Clerks Act. The offices of the six clerks of Chancery were very ancient; they were patent offices, and had existed for 300 or 400 years. Those six clerks had also side clerks, or sworn clerks, who had no official duties to perform, but who merely enjoyed a monopoly of the business in the Court

of Chancery. The fees of these sworn clerks had been regulated from time to time. Their amount was regulated by an order of Lord Hardwicke, and subsequently an alteration was made in them by Lord Erskine. The fees of these persons depended on the number of solicitors by whom they were employed. A man might hold the office thirty or forty years without obtaining a shilling; but if he conciliated the solicitors, he might realize a large income, and some of these sworn clerks had derived 5,000*l.* to 6,000*l.* a year from offices to which no duties were attached. Four of these persons were now enjoying among them, as compensation, about 30,000*l.* a year.

Mr. Pemberton Leigh stated, in 1840, that the duties of these clerks consisted merely in signing their names on the records, and in receiving and transmitting to the solicitors all notices given in the course of a suit. “The statement of these details,” added Mr. Leigh, after alluding to the manner in which the fees were constituted, “will show at once the enormity and iniquity of the tax which is thus levied on the suitor.” A solicitor who was examined before Lord Eldon's commission in 1824 as to the duties of these sworn clerks, stated that they only increased the expense of the suits without rendering any assistance to the solicitors; and he added, alluding to one of the clerks, “Mr. S. was a good clerk, even when he was a lunatic.”

The act 5 & 6 Vict. gave the Lord Chancellor power to fix the compensation of the persons whose offices were abolished, it being provided that the amount of compensation should be not less than three-fourths of their respective salaries; but a much higher amount of compensation than they had any claim to receive had certainly been awarded to them. It used to be the rule to pay a fee to these clerks for every case upon the paper; but Lord Lyndhurst, when he became Chancellor in 1828, issued an order that no clerk in court should be entitled to a fee for a cause on the paper unless he was actually in attendance, and that such fee should not be allowed unless the attendance of the clerk was absolutely necessary. Lord Brougham intended, in 1833, to do away partially with these fees. He gave these clerks full notice that their days were numbered, but there was no alteration, and they received the enormous compensation to which he had referred.

The order for compensation was made in November, 1843, and it excited the greatest astonishment. One gentleman received, as compensation for the deprivation of his office, an office in which neither skill, education, nor acquirements were necessary, no less than 5,434*l.* a year, and he was besides appointed taxing-master, for which he received 2,000*l.* a year; so that for sitting in Chancery Lane five hours a day, he received 7,434*l.* annually, and might retire when he liked with his compensation. Another person, who was merely an agent to a sworn clerk, and who in his application to the Lord Chancellor de-



scribed himself as neither able to write nor to walk, was awarded 472*l.* a year for life. Again, another agent got 1,778*l.* a year, and a waiting clerk obtained a compensation of 344*l.* a year. The compensations and salaries amounted altogether to upwards of 70,000*l.* a year. The Chief Justice of England had only allowed him 10,000*l.* a year, and since his appointment, he had refused to receive the whole of his salary, and took no more than 8,000*l.* That was the income which that learned judge, with all his experience and ability, derived from his judicial situation; and yet here was a person, as he had before shown, being only a clerk, who received 7,000*l.* a year. Surely this was ridiculous, and could hardly be argued on seriously. It must have been a joyful morning in Chancery Lane after the passing of this act, which gave a compensation to everybody! But this was not all, for there was a provision in this act continuing one half of the compensation to these parties for seven years after their death, by which he calculated that each would receive, on an average, 18,000*l.* additional. He did not know how this was to be defended. He heard on a former occasion that there was an instance like it in Ireland. Poor unhappy Ireland! If a job was to be perpetrated in England, they could always refer to Ireland for a precedent! By another clause, there was paid for preparing and passing this act, out of the pockets of the suitors of the Court of Chancery, 393*l.* The bill was prepared by one of these parties who had got 7,000*l.*, and he had a return of money paid for cab fares in going backwards and forwards between that house and Chancery Lane during the progress of the bill. There was actually a charge made for that at the expense of the suitors in Chancery by Mr. Wainwright, who also prepared the bill. It appeared that the bill passed through the house with railroad rapidity. On the 29th of July, 1842, it came down from the House of Lords and was read a first time; on the 1st of August it was read a second time; it was committed on the 2nd of August, and recommitted on the 4th, these two stages being taken after midnight; on the 5th of August it was read a third time; and on the 10th of August the Speaker reported the royal assent to it. The 11th of August then must have been a happy day to all those compensated clerks and agents in Chancery Lane. The compensation was calculated on an average of three years, and in the calculation for compensation even the bad debts of the parties were included. But, why was an average of three years taken, when the usual course in granting compensation was to take an average of ten years? Why, the fact was, that shortly previously to the passing of this act the equity side of the Court of Exchequer had been abolished, and the whole of the business transferred to the Courts of Chancery. Consequently these parties had their compensation calculated on the three years which would show the greatest amount of business done,

whereas, had the usual term of ten years been taken, their profits would not have appeared so large. He had the greatest respect for the Lord Chancellor, but that noble and learned lord was not accustomed to tax these matters, which required great care, and which on all former occasions had been submitted to the Treasury. But such a course would not have done in this case, which, he had no doubt, would there have undergone a searching investigation. This compensation being paid out of the pockets of the suitors in Chancery, any impropriety in the regulation of it was most injurious to them. On the taxation of bills of costs, four per cent. on the whole amount was obliged to be paid by the unhappy suitors in Chancery; and the sum so raised went towards paying this compensation. He thought he had stated enough to justify his motion. Justice ought not only to be well, but should also be cheaply administered; and it was on these grounds that he again brought this matter before the house.

The Attorney-General defended the government in passing the measure, and the Lord Chancellor in carrying it into effect. He said,

The honourable and learned gentleman asked the house in effect to repeal the act of parliament to which he had referred, and thereby to be guilty of a gross act of injustice. It was perfectly immaterial what was the origin of these six and other clerks. The fact was, that certain individuals possessed the offices, and therefore the Parliament, in getting rid of those offices, were bound to give their possessors the fullest compensation. Mr. Horner, who was as good a reformer as the honourable and learned gentleman opposite, said, on Mr. Creevy's motion to cut down the emoluments of the sinecure offices of the tellers of the Exchequer, that nothing was so clear in all regulations for economical purposes as that vested rights must be sacredly protected. In this sentiment Mr. Tierney and Mr. Ponsonby concurred, and the motion of Mr. Creevy was rejected. He (the Attorney-General) only called for the same principle to be applied here. As long ago as 1596, in the time of Lord Ellesmere, these offices were established on a permanent footing; and in 1743, under Lord Hardwicke, the amount of their fees was settled, nor had any change been made except in 1807, when Lord Erskine made some additions to them. Lord Lyndhurst, indeed, prohibited the sworn clerks from receiving an attendance fee where they did not attend, when the cause was in the paper without any chance of being heard; but the amount of the fees had been uniform and invariable, nor had the Lord Chancellor the power to diminish them without great injustice. When it was desired in 1840 to transfer the fees for office copies from these gentlemen to the suitors' fee fund, an act of parliament was thought necessary, and compensation was provided in it. Now, at the time of the abolition of these offices, the holders of them were in

the habit of disposing of the good-will of their business. That was now said to be in violation of the 5 & 6 Edward 6, and 49 Geo. 3. He (the Attorney-general) denied that position. The former of these acts was directed against the sale of offices connected with the administration and execution of justice; but in the case of the six clerks in Ireland, the right of sale of their offices was distinctly recognized, and the 1 Vict., c. 30, s. 24, mentioned as hitherto, "deemed to be saleable" offices much more closely connected with the administration of justice than these—the clerk of the rules, and clerk of the papers, on the plea side of the Queen's Bench, the clerk of the declarations, the clerk of the common bail and estreats, and the clerk of the dockets, (all in the gift of the chief clerk, and saleable by him,) and the clerk of the inner and outer treasury, the clerk of *visi prius* in London and on circuit, and others in the gift of the *custos brevium*. In fact, there was a usual course with respect to the offices in question, where the purchase-money was not a sum in hand, to consider a moiety of the profits for seven years a fair consideration. The emoluments of the sworn clerks were well known before the bill passed, for there was a return of them obtained in 1840, on the motion of the honourable member for Cockermouth, as well as a pamphlet published on the subject by a solicitor of considerable experience; and these offices were commented upon in the house at that time, Mr. Pemberton Leigh calling attention to the profits of them, which were returned in one instance at 8,130*l.* for the previous year; in another instance, at 9,645*l.*; and, in a third, at 10,879*l.* But when Lord Lyndhurst received the great seal for the third time, in 1841, he appointed a commission with a view to reforms in the Court of Chancery; it consisted of Lord Langdale, Vice-Chancellor Wigram, Mr. P. Leigh, and Mr. Sutton Sharpe, two of them known conscientious reformers, and all of the highest character; and they, after communication with the Law Association, consisting of solicitors of the highest eminence and character, reported that it was absolutely necessary that the six clerks and the sworn clerks should be removed out of the way, in order to the proper reforms. The Law Association suggested to the commission that the best means of accomplishing this object would be by awarding compensation to those parties; for they were regarded as having a vested right and interest in their emoluments. A bill was therefore prepared, and every clause of it very carefully and maturely considered by the commissioners.

The Attorney-General then detailed some of the circumstances connected with the progress of the bill through parliament.

Mr. Wainewright called upon Lord Cottenham, and went through the bill clause by clause, pointing out the nature of the compensation to be given, and particularly, that in

respect of the saleable value of the offices, there was to be a clause giving the power of compensating for seven years after the death of the present holder of the office. In the former debate he (the Attorney-General) stated that Lord Cottenham had no objection to that; upon a subsequent occasion the noble member for London (Lord John Russell) said that Lord Cottenham was dissatisfied with that statement, and it was supposed to imply that he had distinctly stated he gave his sanction to the clause. He (the Attorney-General) meant to repeat precisely what he said before. A correspondence had since passed between Lord Cottenham and Mr. Wainewright upon the subject; and in his last letter, dated May 22, 1844, his lordship wrote to Mr. Wainewright—"In my two former letters I have distinctly put the question to you, whether, by your letter to Mr. Follett, you intended to say that I had approved of the clauses, or only that you had explained them to me; to this question I have not received any answer. It is certain that the impression made by the expression used by you on the minds of those to whom your letter was communicated, and by them created in the house, was, that you intended to allege I had approved of the clauses; but this is so inconsistent with the fact, and with what you say in your last letter, that I am unwilling to suppose, and to act upon the supposition, that such was your intention, without once more calling your attention to it." In Mr. Wainewright's reply to this letter, he said he had no hesitation in saying that he did not intend, in his letter to Mr. Follett, to state that his lordship had expressed to him an approval of the clauses—that it was his intention to state in that letter simply what his lordship gave him permission to state, viz., that he had called his lordship's attention to the compensation clauses; that the first conversation he had with his lordship left on his mind a firm conviction that on that occasion he did approve of the whole bill; and he thought himself at liberty to refer in his letter to his lordship's public conduct on the subject. The fact that his lordship allowed the bill to pass without observation warranted the public to believe, as he had believed, that the bill had his lordship's sanction. The Attorney-General then observed that he was not going too far in saying that Lord Cottenham's attention having been particularly drawn to these clauses, and his lordship having made no objection to them at the time, nor stated any objection when the measure was passing through the Lords, might be fairly understood to have approved of those clauses. It was impossible to draw any other conclusion from his lordship's conduct.

Thus they had in favour of this measure the opinion of the eminent persons who composed the commission;—of the solicitors connected with the profession;—also the sanction of Lord Cottenham, not expressed in words, but implied from his silence;—and likewise the sanction of the other law lords, who made no objection to the

bill while passing through the other house. Thus the bill came down to that house with the unanimous sanction of the House of Lords; and there was no force in the idea that it was hurried through parliament without due consideration. Did the honourable member for Kinsale mean to say that any person had an interest in huddling the measure through the legislature? The government had no interest in it, neither had any individual in that or the other house of parliament. The honourable member for Montrose was present when the bill came into the house, and on two occasions he expressed his approval of the bill, both in its principle and in its details. The attention of the house was called to it by the honourable member for Sheffield, who drew the distinction between the different rewards given for political and professional services; so that the bill did not pass without observation and discussion, though possibly not in so full a house as might have been desirable; but that was a circumstance which could not with propriety be urged as an argument against the measure now, seeing that every member had a full opportunity of attending to its provisions.

But let them see what were the objections which his honourable and learned friend made to the clause in the act. In the first place, he apprehended that the honourable and learned member made no objection whatever to the proportions which under the act were assigned to the various parties, supposing the emoluments were such as they were legally entitled to. He objected to the three years' average on which the compensation was granted, as a mode of arrangement disadvantageous to the public, because, he said, in those three years there had been a great amount of additional business in the court, which swelled the averages. Now, he would venture to say, that the addition which was made by the transfer of the Exchequer business was very insignificant indeed; it was scarcely a drop in the ocean, and could hardly be said to have swelled the average. But, said his honourable and learned friend, was ever anything heard so improper and so extravagant as this compensation for seven years after the termination of their lives? Now, his honourable and learned friend sanctioned that proceeding just as much as any other honourable member of the house. It was clearly laid down in the 14th section of the act; and if his honourable and learned friend unfortunately happened to be absent, not so much for the good of his country as for his own private advantage—if he attended circuit rather than that house when this measure was before it, certainly it did not from that follow that the act had not received his sanction as well as that of any other member of the house.

The Attorney-General then maintained, that to give compensation was a course perfectly justifiable under the circumstances; and that it was the course followed with regard to similar offices by the government which was composed of hon. gentlemen opposite. In 1836, when it

was proposed to abolish the office of the six clerks in Ireland, a bill was introduced into the other house, and received the sanction of government, by which the legality of the sale and transfer of those offices was fully acknowledged, and compensation was awarded for the value of their fees to the six clerks. A sum of 4,000*l.* was granted, and they received, in addition, an annual sum not amounting to three-fourths or two-thirds of the whole of their emoluments, but an amount commensurate with the full net profits of the offices they enjoyed. Now, he did not find fault with this arrangement, as he considered they were bound, in fairness and justice, to compensate them to the full extent. In 1821 it was resolved to abolish the sinecure offices of prothonotary of the Court of Queen's Bench and Common Pleas, and of filasers of the Court of Common Pleas in Ireland, and they had full and ample compensation for the loss of their emoluments. The same thing was done with reference to several offices in the English courts, and compensation given to the amount of 6,000*l.* or 7,000*l.* a year. But his hon. and learned friend objected to compensation being given to the agents, who had no permanent claim upon the offices they held. But on this point he had example also; for by the 3 Wm. 4, c. 74, compensation was given to the agent of the senior deputy registrar, and also to the secretary of the Master of the Rolls. Though the agents held their offices by no legal or permanent tenure, yet they were persons who, as long as the assistant clerks lived, were very unlikely to be removed, and therefore they were properly included in the list of parties receiving compensation.

The Attorney-General next observed, that an objection had been raised to the Lord Chancellor having been vested with the power of making these compensations at his own discretion; and to the great advantage derived from the minute investigations instituted in former cases of compensation. Now, this case was in some respects different from others. The compensation was taken out of the suitors' fund, and not out of the consolidated fund; and therefore, there was no necessity for consulting the Treasury on the subject. Again, his hon. and learned friend said the law was improperly passed, and the compensation unjustly given; but he held, on the contrary, that there never was an act of parliament framed with so much care, or that excited so much attention. Seeing, then, that this act had been so fully considered, he asked if it would be just to grant the committee asked by the hon. and learned gentleman, his object being to repeal that law, and to deprive the parties of the compensation they had now enjoyed for three years?

In considering this question they ought to bear in mind that by the act of parliament the Lord Chancellor was bound to a particular line of duty in fixing the compensation. In ascertaining the amount of compensation, the Lord Chancellor had always adhered to the *minimum* sum he was enabled by the statute to assign, so careful was he to pursue the intention the le-

gislature had in view. What had been the result of the measure? Fees had been taken off to the amount of between 24,000*l.* and 25,000*l.* a year. New fees had undoubtedly been imposed, because new fees were necessary for the payment of the new officers appointed under the act, but the amount of these new fees had been gradually diminished, and altogether the public had been benefited by a diminution of between 15,000*l.* and 16,000*l.* a year. But, then, compensation to the amount of between 4,000*l.* and 5,000*l.* had fallen in, so that, on the whole, a diminution of expense to the public of about 20,000*l.* had been effected. He admitted that the public had paid a large price for the abolition of these offices, but not a larger price than justice and a due regard to the public interests required, and the public had an inestimable gain in the power of reducing fees, which had already produced, as he had said, a saving of between 15,000*l.* and 16,000*l.* a year. Ultimately the only fees that would be required were those necessary for the payment of the salaried officers appointed under this act. One word on these new offices. Under the act the Lord Chancellor had the power of appointing six new taxing officers at 2,000*l.* a year. He had not appointed one. Being desirous that the appointment should be perfectly impartial, he had referred it to the commissioners, and eventually four clerks in court and two solicitors were appointed.

Sir J. Graham, taking the speech of the mover in conjunction with the motion, inferred that the object of the committee must be to inculpate the conduct of the Lord Chancellor with respect to the compensations referred to in the motion; and feeling that the conduct of the noble and learned lord had been pure and irreproachable, he should be no party to the appointment of a committee under such circumstances.

The principle of compensation, he contended, was just and defensible. It did not rest on the single precedent of the six clerks in Chancery in Ireland, but on the cases of the Exchequer and other courts. In the case of the Exchequer Court, seven-eighths of the average fees for a given number of years formed the basis of the compensation. In this bill the *minimum* was three-fourths, with a discretionary power to the Lord Chancellor to give the full amount of the average of the last three years in cases where he might deem it necessary. *Assuming always the fees themselves were legally exacted*, it appeared to him that nothing could be more just or reasonable than the principle of compensation on which the bill proceeded. Their legality seemed to have been clearly established. They were fixed by Lord Hardwicke a century ago, and reviewed by Lord Erskine, and they had been constantly reviewed and regulated by the courts. In considering the compensation to be awarded, the Lord Chancellor had obtained returns of all the fees, which he submitted

to Vice-Chancellor Wigram and Mr. P. Leigh, before he proceeded to exercise the power given him by the bill. In every case he had awarded the *minimum* marked out by the act of parliament. The hon. mover had complained of the amount—he had pointed to the 77,000*l.* a year. Why, that sum had already been reduced to somewhere about 40,000*l.*, and one-tenth of the compensation had already lapsed by death. In the course of twenty years the whole would be reduced to 20,000*l.* a year. He repeated his conviction that the principle on which the compensation went was a just one. They could never disregard private rights without revolting public opinion, which desired to see reforms effected without the infliction of private injury. *On any other occasion he would have been ready to agree to the appointment of a general committee on fees*, but coupled, as this motion was, with the intention of censuring the Lord Chancellor, he could not, for the reasons he had stated, be a party to it,—feeling that that noble and learned lord had been hardly dealt with in the matter. He (Sir J. Graham) did not deprecate this discussion, because he believed that it would lead to the facts being better understood, for the more they were inquired into the more it would be seen that that illustrious and noble person had not conducted himself in any manner that was unworthy of his high station.

Mr. F. Baring congratulated the hon. and learned gentleman who had made this motion on his having elicited from the right hon. baronet a declaration that he had no objection to a general inquiry on the subject of fees. As to what he had said with respect to the Lord Chancellor, he (Mr. Baring) begged to disclaim all intention of casting censure on that noble and learned lord, if he voted for this motion. He believed that any causes of complaint that had arisen, were quite as much owing to the act itself as to the administration of it. He also entirely agreed with the right hon. baronet as to the justice of compensation. If we allowed abuses to grow up, it was but right that we should pay for them; and we had no right to effect public reforms at the expense of private individuals. But it was not surprising that the public mind should be aroused when they found what was tantamount to a million sterling awarded in the shape of compensation to one individual.

Mr. C. Buller, after speaking on the larger question involved in the 1st part of the motion, (which we have noticed elsewhere,) said, that Lord Lyndhurst coming into power at the time when these changes were in contemplation, did what a wise and honest minister would have done in promoting the progress of law reform, while he placed his own conduct beyond suspicion.

There were gentlemen familiar with the subject, who had done more for law reform than all the gentlemen of this house; he referred the matter entirely to them, and used his official

power merely to give effect to their decisions. The names of those persons had been mentioned. No party feeling had predominated in the appointment of that commission; it consisted of persons who opposed, as well as of persons who supported the government; and of the number, Vice-Chancellor Wigram and Mr. Pemberton Leigh had, as practising lawyers, done themselves honour, which he wished he could see equalled in his own branch of the profession, by their efforts to reform the administration of the law. There was everything in the mode in which the question of compensation was settled to satisfy the house and the country, that those who undertook the duty of effecting an arrangement were not likely to be parties to jobbing. The question was not one on which party influence had any influence then, and he hoped it would have none now. The justice of compensating parties whose offices were abolished was admitted. The only question was as to the amount. It was impossible to lay down a principle to regulate compensation in such cases; and no one could be blamed who went according to a course of precedents established by parliament. The persons to whom the case before the house was submitted, found as a general rule that parliament had never allotted less than three-fourths of the salary. In some cases more had been allotted. It was not unreasonable, therefore, that they should fix on the *minimum* of three-fourths.

In all cases of law reform there were a great many prejudices and vested interests involved; any one wishing to make the practice of the courts more rational, expeditious, and cheaper, was immediately met by a host of persons, who knew by any reform, without compensation, they should be deprived of their livelihood; and these were not persons whose opposition was to be despised by those who undertook law reforms; with their aid the work was comparatively easy; make them opposed to it, and it was almost impracticable. Looking at the importance of doing away with abuses like those detailed in connexion with these offices, it was their interest to declare to those who held them that they should not be made the scapegoats of the reforming policy of the legislature, that they should not be losers by a change that effected such a great gain to the public. It was said that such an extravagant rate of compensation disgusted the public with law reform, and made it a burden. It was said that the fees had been increased in consequence of it. The direct contrary was the fact; the fees since the change had never been as much as before. In the first year they were 750*l.* less than before; not much, certainly, upon 70,000*l.*, but they had gone on diminishing ever since, and he understood that there was a diminution of 24,000*l.* on the former account. It was said that particular fees had been raised, but that was for the convenience of making the payments; the great abomination of the fee system was the number of officers for taking them, over whom the public had no control.

Mr. Romilly supported the motion, which seemed in the most important part of it to be conceded by the right hon. baronet, but nothing could be more impolitic or more unjust than after five years had passed they should institute an inquiry, with the only view of taking away the compensation which they had given.

Sir R. Peel, after adverting to the general question of the fees of office, (which we have noticed in an earlier page,) and giving an assurance that *government would cause an inquiry to be instituted for the future*, said, I cannot agree that it is just to institute such inquiry in respect of what is past. I do not think that it is any imputation against my noble friend the Lord Chancellor, that he conformed to an act of parliament. If the act of parliament is incorrect, that is not the fault of my noble friend, but of this house, though the house might have been ignorant of it.

In the year 1840, a most important speech was delivered in this house upon this subject by my learned friend Mr. Pemberton Leigh, and he told you facts which were calculated to direct your attention to this subject. He stated to you what was the number of causes in the year 1839, and compared it with the number in the year 1745, or some other year 50 years preceding, and he showed that the amount of business had not increased. He said "Look at the increase in the number of the population, at the increased amount of personal and real property, and say why there should not have been a great increase in the business of the Court of Chancery. The reason why there is no such increase is, that the expenses are so enormous. I look at some gentlemen who hold office in that court, and I find one receiving 10,000*l.* a year, another 9,000*l.* a year, and another 8,000*l.* a year. I take the gentleman who receives 10,000*l.* a year, and, allowing every deduction, I would give him a compensation of 7,000*l.* a year, which is equal to what you give to the Speaker, more than you give to the Secretaries of State, and double the retired pension of the Lord Chancellor;" and he said that that would be a fair allowance; and you properly acquiesced in that as an equitable transaction, and you felt that the abuse was a great one, that it demanded a remedy for the future, but that it was absolutely necessary to provide a liberal compensation. It is unfair to attempt to cast any imputation upon my noble friend. It may be revolting to talk of the sale of offices; but in 1836 you expressly recognised the legality of the practice of selling offices, and in this very department of the six clerks in Ireland. An act passed only four years preceding the speech of Mr. Pemberton Leigh, and six years before the passing of this act, wherein it is expressly declared that persons in the six clerks office in the Court of Chancery in Ireland had obtained their places by purchase, and were entitled to

sell the same at their pleasure, and to receive full compensation for any diminution of their value by reduction of emolument or abolition. Here, therefore, was a recognition not only of the practice of selling offices, but of their right to full compensation on the abolition of such offices. How could any imputation be justly cast upon my noble friend that he tolerated the sale of offices, after the House of Commons had recognised the sale of offices and the title to compensation upon their abolition? How could he be accused, if he acted upon a precedent established by this house as to offices in a court presided over by so eminent a judge as Lord Plunket? Was he to depart from that precedent?

Let us in future institute a strict inquiry into all such cases, and let us have periodical inquiries instituted into the amount of fees, and if we shall find they should amount to an extravagant sum, I should say, having provided what you think a reasonable sum,—and by reasonable I mean liberal,—sufficient to secure the acceptance of the office by men of high character, let us from time to time have an inquiry to prevent the rapid and extravagant accumulation of fees. I do say that I think it is a scandal, when you abolish civil sinecures, that you should allow greater sinecures to be held by persons who have no strain upon their powers, and whose cases have escaped your attention for the very reason that they should, namely, that they are held by persons who have not any claim to them. But I cannot agree to that part of the motion which involves an inquiry into the past; for I think if you were to take away from those gentlemen what you had

given them after they had enjoyed it for five years, it would be a gross injustice; and if you do not intend to do so, I think an inquiry into the amount would be superfluous. But it must be recollected that in these cases my noble friend gave in every instance the *minimum*. You said he might give not less than three-quarters, but he might give more; and my noble friend, with all the feelings he may be expected to entertain towards officers of his court, in every instance, without exception, gave the *minimum*. If the facts escaped your attention, and you acted too liberally, the Lord Chancellor is not responsible; the act is as you passed it: but if you think the act is too liberal, you should not have passed it. An hon. member says the act passed rapidly; and why did it pass rapidly? Because it was a liberal one, and because there was, therefore, no opposition. Is it any imputation upon my noble friend that it passed rapidly? If it passed rapidly, it was not because it was brought forward without due notice; the attention of the house was called to the subject by Mr. Pemberton Leigh, in 1840; and the attention of the house having been thus drawn to the subject, a compensation having been provided by parliament, and the Lord Chancellor having taken in every case the *minimum* of the amount you provided, I must say that to cast any imputation on my noble friend would be unjust. But, in future, on the part of the government, I promise the proposition my cordial concurrence.

For the motion	65
Against it	80
Majority against the motion	15

## ATTORNEYS TO BE ADMITTED,

Trinity Term, 1846.

[Concluded from page 28.]

### Queen's Bench.

#### Clerks' Names and Residences.

Fox, Charles James, 104, Albany Street, Regent's Park; Canterbury; and University Street.  
 Fiske, Edward Brown, 5, Montpelier Street, Brompton; Norwich; and Kessingland.  
 Fraser, Edward John, 24, Sidmouth Street, Regent's Square; and Canonbury Street.  
 Gibson, Charles Reginald, 1, Park Terrace, Hackney; and Lewisham.  
 Gidley, Robert Courtenay, 23, Earl's Street, Blackfriars; and Albany St., Hyde Park.  
 Greenacre, Charles Edward, East Dereham; and 19, Swinton Street, Gray's Inn Road.  
 Hawkes, Henry, Birmingham.  
 Henderson, Henry Renny, 31, Bloomsbury Square.  
 Hadow, Henry, 43, Upper Harley Street.  
 Hodgson, John, 14, Store Street, Bedford Square; Wilmot Street; and Newcastle-upon-Tyne.

#### To whom Articled, Assigned, &c.

Robert Sankey, Canterbury  
 Robert Fiske, Beccles  
 R. E. Burrough, Norwich  
 L. Acland, Chancery Lane  
 H. C. Chilton, Chancery Lane  
 John Widdows, Copthall Court  
 J. R. Gibson, Copthall Court  
 John Honeywood Townsend, Honiton  
 F. Riddell Reynolds, Great Yarmouth  
 W. S. Harding, Birmingham  
 J. H. Henderson, Bloomsbury Square  
 W. Stephens, 30, Bedford Row  
 Henry William Fenwick, Newcastle-upon-Tyne

- Harwood, Thomas Charles, Preston Cottage,  
 Lower Norwood; 28, Tavistock Place;  
 and Belgrave Street  
 Harris, Joseph William, Rochdale  
 Harris, Frederick, Aston, near Birmingham;  
 and Grafton Street  
 Jones, Thomas, 104, Albany Street, Regent's  
 Park; Chorley; Moreton Terrace; and  
 Upper Albany Street  
 Jones, John, 2, Camberwell Place, Upper  
 Grange Road, Old Kent Road; and  
 Ellesmere  
 Jones, John, 37, Wakefield Street, Regent's  
 Square; Newark; and Stamford  
 Knuckey, Francis Burdett, 41, Wilmington  
 Square  
 Long, George Henry, Windsor  
 Lambert, Alfred, 13, Upper Stamford Street  
 Maberly, Thomas Henry, Colchester; and  
 Albert Square  
 Miles, Thomas, 31, Kenton Street, Brunswick  
 Square  
 Meech, Francis Weston, 36, Burton Crescent;  
 and Weymouth  
 Mellor, William Jones, St. Ives  
 Mackey, Christopher Bainbridge, South  
 Shields  
 Miles, Thomas, jun., 15, Great James Street;  
 and Leicester  
 Mason, Charles, 307, High Holborn; Crescent  
 Street; and Uttoxeter  
 Mantell, Alexander Houstoun, 59, Burton  
 Crescent; and Farringdon  
 Mote, Edward, 21, Penton Place, Pentonville  
 Nevill, Richard, 5, Princes Street, Bedford  
 Square; and Tamworth  
 Newill, Robert Daniel, 13, Featherstone Build-  
 ings; and Shrewsbury  
 Niblett, Isaac Goodluck, 11, Everett Street;  
 and Bristol  
 Peter, John, 40, Grafton Street, Tottenham  
 Court Road; and Callington  
 Pidsley, John, 7, Little Ormond Street; New-  
 ton Abbot; and Great Ormond Street  
 Phillips, John William, 23, River Street, Mid-  
 dleton Square; Haverfordwest; and Chad-  
 well Street  
 Patteson, Henry, 6, South Square, Gray's Inn;  
 and Greenwich  
 Phipps, Thomas, 5, Montpellier Row, South  
 Lambeth  
 Pinnock, George, 8, Everett Street, Bruns-  
 wick Square; and Hallfield Parade, near  
 the City of Gloucester  
 Peile, Rowland Babington, 26, Fitzroy Square  
 Paley, Cornwallis, Aldborough; and Lang-  
 thorpe  
 Piper, George Harry, 7, Great Quebec Street,  
 Marylebone; and Ledbury  
 Quick, Henry Brannan, 30, Gloucester Cres-  
 cent, Regent's Park  
 Russell, James Ward, 2, Bedford Row; and  
 York  
 Ransom, Robert, jun., Sudbury; and 128,  
 Upper Seymour Street  
 Radcliffe, Thomas, 7, Park Terrace, Camden  
 Town; and Blackburn  
 Robinson, Thomas, 10, Aldhous Terrace,  
 Barnsbury Park; and Rugeley  
 G. Robert Dodd, New Broad Street  
 George Smith, Golden Square  
 Cyril Prescott, late of Manchester  
 H. M. Tyndall, Birmingham  
 John Jones, Chorley  
 E. Dakin Staunton, Chorley  
 George Salter, Ellesmere  
 T. F. A. Burnaby, Newark-upon-Trent  
 George Selby, St. John Street Road  
 William Long, Windeor  
 John Iliffe, Bedford Row  
 Thomas Maberly, Colchester  
 George James Nicholson, Raymond Buildings  
 George Arden, Weymouth  
 B. A. Greene, St. Ives  
 Christopher Bainbridge, South Shields  
 Samuel Miles, late of Leicester  
 R. Miles, Leicester  
 A. Welby, Uttoxeter  
 John William Wall, Devises  
 David W. Wire, St. Swithin's Lane  
 Robert Nevill, Tamworth  
 Joshua John Peele, Shrewsbury  
 J. K. Habenfield, Bristol  
 Samuel B. Serjeant, Callington  
 Parmenas Pearce, Newton Abbot  
 Thomas Gwynne, Haverfordwest  
 John Taylor, Manchester  
 James Henry Frederick Lewis, Essex Street  
 James Robert Wemyss, Gloucester  
 Thomas H. Peile, Great Winchester Street  
 Thomas Farmery, Ripon  
 Thomas Jones, Ledbury  
 James Dyer, Ely Place  
 James Russell, York  
 Robert Ransom, sen., Sudbury  
 James Neville, Blackburn  
 Frederick Crabb, Rugeley

- Robson, William Wealands, jun., Bishop Wearmouth . . . . .
- Rogers, Henry, 26, Osnaburgh Street, Regent's Park; and Sheffield . . . . .
- Sole, John Lavers Liscombe, Devonport; Albion Street, Pentonville; and Everett Street . . . . .
- Simonds, Francis, 5, Warwick Court, High Holborn; and Devizes . . . . .
- Smith, George Archer, 33, Devonshire Street, Queen's Square; East Retford; and Store Street . . . . .
- Sanders, Robert Muriel, 20, Hart Street, Bloomsbury Square . . . . .
- Sharp, James, 27, Burton Crescent; and Southampton . . . . .
- Smith, John Bridgeman, 22, Holles Street, Cavendish Square . . . . .
- Simpson, Robert John, 40, Commercial Road, Lambeth; and Newark-upon-Trent . . . . .
- Sworder, Thomas, jun., 29, Surrey Street, Strand . . . . .
- Stedman, John, 56, Gower Street, Bedford Square; and Great James Street . . . . .
- Shuttleworth, Samuel, 96, Gloucester Place, Kentish Town; and South End, Hampstead . . . . .
- Somerville, Stafford Baxter, Doncaster . . . . .
- Slack, Edward Francis, Chippenham . . . . .
- Stafford, William, jun., 13, Buckingham St., Strand . . . . .
- Snell, Silas, Great Torrington; and 34, Stamford Street . . . . .
- Stretton, George, Nottingham; and Everett Street . . . . .
- Slaney, Robert, Newcastle-under-Lyme . . . . .
- Shafte, George Dalston, Durham . . . . .
- Simpson, Henry, Rutland Lodge, Effra Road, Brixton . . . . .
- Saville, Edward Bouchier, 60, Carey Street; and Middleton Square; and Barnstaple . . . . .
- Tweed, George Tash, 4, Alfred Place, Bedford Square . . . . .
- Unwin, Frederick George, 31, Bartlett's Buildings, Holborn; and Sawbridgeworth . . . . .
- Wilkinson, Samuel, 57, Hatfield Street, Stamford Street . . . . .
- Wilkinson, Richard, 10, Rufford's Row, Islington; and Kendal . . . . .
- Wilkin, Charles, 10, Spring Gardens . . . . .
- Woodgate, William, 9, Woodland Terrace, Greenwich . . . . .
- Weston, William Henry, 89, Guildford Street, Russell Square . . . . .
- Watts, Thomas David King, 22, Bloomsbury Street, Bedford Square; and Jersey . . . . .
- Westhall, Samuel Thomas Maling, New Inn . . . . .
- Wilson, James, jun., 6, Crescent Place; New Bridge Street; and Liverpool . . . . .
- Wilson, William Wilfred, 24, Store Street, Bedford Square . . . . .
- Woodrooffe, George Thomas, 7, Staple Inn; and Great Coram Street . . . . .
- Walker, Robert Greave, 27, Surrey Street, Strand; and Tickhill . . . . .
- G. Walton Wright, Sunderland . . . . .
- Thomas William Rodgers, Sheffield . . . . .
- Edward Sole, Devonport . . . . .
- Alexander Meek, Devizes . . . . .
- William Newton, East Retford . . . . .
- Robert Bradfield Sanders, New Inn . . . . .
- James Chaldecott Sharp, Southampton . . . . .
- Henry Sayell Stokes, Truro . . . . .
- William Whaley Billyard, Budleigh Salterton, Devon . . . . .
- Thomas Sworder, sen., Hertford . . . . .
- George Debenham, Salters' Hall, St. Swithin's Lane . . . . .
- William Holmes, Great James Street . . . . .
- Henry Seymour Westmacott, John Street, Bedford Row . . . . .
- Edmund Baxter, Doncaster . . . . .
- John Marsden, Wakefield . . . . .
- Joseph Phillips, Chippenham . . . . .
- William Stafford, Buckingham Street . . . . .
- Henry Adoniah Vallack, Great Torrington . . . . .
- George Freeth, Nottingham . . . . .
- George Rawson, Nottingham . . . . .
- Francis Stainir, Newcastle-under-Lyme . . . . .
- John Burrell, Durham . . . . .
- Herbert Sturmy, 8 Wellington Street, Southwark . . . . .
- Richard Bremridge, Barnstaple . . . . .
- Charles Mason Innes Pollock, Great George Street . . . . .
- Henry Hugh Beckitt, Lincoln's Inn Fields . . . . .
- Thomas Unwin, Sawbridgeworth . . . . .
- John Foster, Walsall . . . . .
- Thomas Holme Bower, Chancery Lane . . . . .
- Roger Moser, Kendal . . . . .
- James Wilkin, 217, Piccadilly . . . . .
- William Tanner Neve, Cranbrook . . . . .
- John Meek, late of Basinghall Street, deceased . . . . .
- John Fox, Basinghall Street . . . . .
- Joseph Maynard, 57, Coleman Street . . . . .
- Bryan Holme, New Inn . . . . .
- Joseph Mallaby, Liverpool . . . . .
- William Beamont, Warrington . . . . .
- William Woodrooffe, Lincoln's Inn . . . . .
- Henry Newton, York . . . . .



Wheat, John James, 4, Liverpool Street; St. Pancras; and Norton Lees	John Wheat, Sheffield
Whiting William, 27, Middleton Square; Lambeth Terrace, Highgate Hill; Agincourt Court, Monmouth; and Uxal St., Islington	William Harding Wright, Essex Street, Strand
Weymouth, Thomas Wyse, 74, Gower Street, Bedford Square; and Kingsbridge	Isaac Weymouth, Kingsbridge
Ward, Newman, 22, Portsea Place, Connaught Square	William James Norton, New Street, Bishopsgate Street
Winfred, William, 6, Elysium Row, Fulham	Charles Addis, Great Queen Street, Westminster
Wilson, Benjamin, Millford House, Edmonton	William P. Bartlett, Nicholas Lane
Wilde, John Thomas, Clifton; Lisle Street; and Henrietta Street	James Thomas Woodhouse, Leominster
Wilkinson, Joseph, Manchester; and York	Thomas Ward, York
	Henry Pearson, York
Wendon, George, Dursley	Richard Tabram, Cambridge
	J. Vizard, Dursley

*Added to the List for Trinity Term pursuant to Judges' Orders.*

Orchard, William Henry, Hornsey, and Park Place, Milton-on-Thames	Edward Farn, 14, Gray's Inn Square
Parry, Thomas, Carmarthen	Thomas Williams, Carmarthen
Hewson, Frederick, Wrington; and Balham Hill	Bryan Holme, New Inn
	John James, Wrington.

## TRINITY TERM EXAMINATION.

THE examiners appointed for the examination of persons applying to be admitted attorneys, have appointed Thursday, the 4th day of June, at half-past nine in the forenoon, at the *Hall of the Incorporated Law Society*, in Chancery Lane, at ten o'clock precisely, to commence the examination. The articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the judges, must be left with the secretary, on or before Thursday, the 28th instant.

Where the articles have not expired, but will expire during the term, the candidate may be examined conditionally, but the articles must be left within the first seven days of term, and answers up to that time.

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity and Practice of the Courts. 5. Bankruptcy and Practice of the Courts. 6. Criminal Law and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the preliminary questions (No. 1.); and it is expected that he should answer in *three* or more of the heads of inquiry.—*Common Law* and *Equity* being two thereof.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Rolls Court.

DISMISSAL OF BILL. — CONSTRUCTION OF ORDERS 14 AND 114 OF MAY, 1845.

*The times of vacation must be reckoned in computing the time for the dismissal of a bill for want of prosecution after answer, unless they occur within the time allowed for excepting to the answer.*

THIS was a motion for the dismissal of the bill for want of prosecution, the answer having been filed on the 14th of Feb. 1846, and no proceedings having been taken until after service of the notice of motion, when an order was obtained to amend. The notice of motion was served on the 25th of April.

Mr. *Shebbeare*, for the plaintiff, said, that according to the 14th of the Orders of May, 1845, the times of vacation were not to be reckoned in computing the time for amending any bill or excepting to an answer; and if the time for the Easter vacation were deducted, it would be found that sufficient time had not elapsed since the filing of the answer to justify the present application. He also contended, that the time allowed for vacation ought not to be reckoned in the time allowed for filing replication.

Mr. *Miller*, contra, said, that the Order 16, Art. 31, and Order 114 of May, 1845, corresponded with those of the 4th and 16th Orders of 1828, with the exception of the time being shortened, and in construing the latter orders, it was held by the Vice-Chancellor of England, that the period allowed for vacation must be

reckoned, unless they occur within the time allowed for excepting to the answer. He cited *Marriott v. Tarpley*, 8 Sim. 18; *Clare v. Clare*, 5 Jur. 1079.

The Master of the Rolls said, the Order respecting vacations did not apply to the general case of a replication, and that the order must therefore have been made for dismissal, had not the plaintiff since obtained an order to amend; but that being the case, he must pay the costs of the motion.

*Wiles v. Cooper.* May 8, 1846.

### Vice-Chancellor of England.

#### INFANT.—DECREE.

*Where a decree has been obtained in a suit to which an infant is a party defendant, without the concurrence of such infant, after she has attained 21, the court will allow her to put in a further answer and to have the cause reheard.*

*An infant applying on coming of age to put in a further answer must, if the suit is properly constituted, pay the costs of the application.*

THIS was a motion on the part of Harriet Cole, who was described in the title of the cause as an infant, but who had in fact attained her age of 21 years, that she might be at liberty to put in an answer and to enter into evidence in support of such answer, and that the cause might be reheard. It appeared that the defendant attained her age of 21 years on the 13th August, 1844, and in November, 1846, a subpoena to hear judgment having been served on the solicitor, who had hitherto acted in the cause, she was applied to by him for instructions, which she declined giving, and requested him not to appear or act further for her. On the 21st of November, the solicitor returned the subpoena which was sent to him on her behalf to the plaintiff's solicitor, and informed him that he was no longer concerned for her, notwithstanding which the plaintiff proceeded to hear the cause, and in December, 1845, a decree was pronounced. In the decree which was drawn up, the defendant was described as an infant, and was stated to have appeared by counsel for her next friend, although no instructions were given for any appearance on her behalf.

Mr. James Parker, in support of the motion, said, it was proved by the affidavit of the defendant's present solicitor, that they laid the papers before counsel to advise as to the proper steps to be taken, and that the defendant was quite taken by surprise on hearing that the cause had been heard. By the affidavit she had distinctly proved, that notice was given to the plaintiff's solicitor of the solicitor who acted for her next friend being no longer concerned for her, and that she knew nothing of the decree.

Mr. Bethell, contra, said it was evident the defendant had only waited to see what sort of decree would be made, and finding that it was

not favourable to her views, she then for the first time sought to repudiate it, for although the decree was made in December, 1844, notice of this application was not given until June, 1845. This was a sort of conduct that the court never sanctioned, *Powis v. Mansfield*, 6 Sim. 637; *Kelsall v. Kelsall*, 2 Myl. & K. 409. The application also should have been to set aside the decree, for if there was no decree against the defendant there was no decree against any party.

The Vice-Chancellor said, the question was, whether there had been a decree binding upon the party making this motion. [His Honour then read the decree, in which it was stated that the defendant, Harriet Cole, appeared by her guardians and next friend, and continued.] It was evident there was no decree between any such parties, and looking at the question of time, it appeared that the plaintiff was apprised of the defendant's intention not to instruct the solicitor who had appeared for her next friend on the 19th November, which was some time before the decree was pronounced. His Honour said, he was therefore of opinion, that there was no decree against the defendant who was now moving. The court had nothing to do with any difficulties that might arise between the plaintiff and any other person, and would therefore make the order as asked by the notice, which would confine its operation to the case of the plaintiff and the present defendant. The defendant, however, must pay the costs, for if the suit was originally right the defendant could not complain, and as the order was an indulgence, she ought to pay for it.

*Snow v. Cole.* April 20, 1846.

### Queen's Bench.

#### (Before the Four Judges.)

#### TROVER.—SPECIAL DAMAGES.

*In an action of trover by a carpenter for the tools of his trade, it was alledged in the declaration, by way of special damage, that the plaintiff was for some time prevented following his business of a carpenter, and damages given in respect of such claim.*

Held, 1. That special damages may be recovered in an action of trover. 2. That the damage was the natural and legal consequence of the act, and the court refused a rule to reduce the damages, on the ground that the injury alleged to be sustained was too remote.

THIS was an action for trover, in which the jury gave a verdict for the plaintiff, damages 20*l.* The plaintiff was a carpenter, and the action was brought for the conversion of the tools of his trade. There was an allegation of special damage in the declaration, that by reason of the detention of the tools the plaintiff had, for a certain space of time, been prevented from following his business as a carpenter, and damages were given in respect of such claim.

Mr. Serjeant Allen now moved for a rule to show cause why the damages should not be

reduced. No damage is done to the plaintiff till the time of conversion, and the measure of damages is the value of the goods at the time of conversion. In a late case at *nisi prius* in the Exchequer, where an action of trover was brought against an innkeeper for the detention of a theodolite, and it was alleged by way of special damage, that the plaintiff was prevented carrying on his business as a surveyor, the Chief Baron was reported to have held that no special damage could be recovered at all; that it was inconsistent with the nature of the action, and that the estimate of damages could only include the enhanced value of the goods. *Davis v. Oswell*,<sup>a</sup> was trover for a pony, and special damage alleged by reason of the plaintiff being obliged to hire other horses, and Baron Parke admitted the evidence of special damage, but said that if there was any dispute as to the amount, he was prepared to reserve the question. The fact that the plaintiff was for some time prevented carrying on his business as a carpenter is not a ground for special damage. It is too remote a consequence of the act of conversion. The damages must be the natural and legal consequence of the act done, and not any remote injury which may perhaps result from the conversion. *Moon v. Raphael*.<sup>b</sup>

*Cur. adv. vult.*

Lord Denman, C. J., on a subsequent day, said, that the court had taken time to consider this question, with a view of ascertaining whether any rule, such as the one referred to in the argument had been laid down by the Court of Exchequer, that no special damage could be recovered in an action of trover; but it appeared, that no such rule had been adopted, and that under the circumstances of this case, the special damage alleged appeared to be the natural and legal consequences of the act of conversion, and that therefore there would be no rule.

Rule refused.

*Bodley v. Reynolds.* Easter Term, 1846.

#### Queen's Bench Practice Court.

PAUPER.—DISPAUPERING.—COSTS OF THE DAY.—PAUPER WHEN LIABLE TO.

*If a plaintiff who has been admitted to sue in formâ pauperis acts vexatiously in the conduct of the cause, the court will dispauper him; and if, after notice of trial, the record has been withdrawn, he may be ordered to pay the costs of the day.*

A RULE had been obtained calling upon the plaintiff to show cause why he should not be dispaupered, and why he should not pay the costs of the day for not proceeding to trial under the following circumstances:—

The action was commenced in May, 1844, but issue was not joined until the end of April, 1845, when notice of trial was given for the then ensuing sittings after Trinity Term:

this notice was countermanded. On the 7th of June following the plaintiff obtained an order to sue *in formâ pauperis*, and on the 7th of December gave fresh notice of trial for the sittings in Hilary Term in the present year, but the cause was at those sittings made a *remane* to the sittings after term, and placed in the list of causes to be taken on the 5th February. At that time the defendant was prepared with witnesses from Bristol; the record, however, was then withdrawn, and on the 31st of March last, notice of trial was again given for the second sittings in this (Easter) term. The plaintiff's affidavit in answer stated as an excuse for not proceeding to trial after Hilary Term, that he was at that time unable to prove the defendant's hand-writing, but by the same affidavit it further appeared that at the second sittings in this term the record was again withdrawn, in order (as it was alleged) to add another count to the declaration, according to the advice of counsel.

The plaintiff in person appeared to show cause against the rule.

*T. W. Saunders*, in support of the rule, submitted that the rule ought to be made absolute. *Facer v. French*, 5 Dowl. The only question could be as to whether the plaintiff should be dispaupered and pay the costs of the day.

*Wightman, J.* That certainly is the only question. I think, however, that those costs should be paid by the plaintiff; there have been no less than three defaults, and the plaintiff appears to be tampering with the indulgence of the court.

Rule absolute accordingly.

*Bedwell v. Coldstring*, Easter Term, 1846.

#### Court of Bankruptcy.

INSOLVENT PETITIONER UNDER 7 & 8 VICT. C. 96.

*An insolvent who has recently been discharged by the Court for Relief of Insolvent Debtors, may be discharged from debts subsequently incurred, by this court.*

*A final order may be made in a case where it appears that judgment, as in case of a nonsuit, has been entered up against a petitioner, in an action of trespass.*

James Phineas Davis, whose petition was dismissed on a former occasion, (*ante* p. 490,) in consequence of its deviating from the form prescribed by the act of parliament, filed a second petition, which came before Mr. Commissioner Holroyd, when three objections were taken on behalf of creditors.

It appeared that the petitioner filed his petition in the Court for the Relief of Insolvent Debtors, under the 1 & 2 Vict. c. 110, on the 6th day of December, 1845, and that the peti-

\* The costs of the day now prayed for were those for not proceeding to trial on the 5th of February. The rule *nisi* was granted before the second withdrawal of the record at the second sittings in Easter Term, 1846.

<sup>a</sup> 7 Car. & Payne, 804.

<sup>b</sup> 2 Scott, 489.

tion came on for hearing on the 13th day of January, 1846, when the insolvent was discharged, the debts and claims against him amounting, according to his schedule, to 21,723*l.* 5*s.* 3*d.* In the schedule annexed to the petition filed in this court, under the 7 & 8 Vict. c. 96, the names of two additional creditors were inserted, for 67*l.* 11*s.* 6*d.*, and the consideration of the debt in each case was stated to be—"Taxed costs allowed to this creditor on a judgment as in case of a nonsuit in an action of trespass." The names of the petitioner's creditors, as contained in the schedule filed in the Court for the Relief of Insolvent Debtors, were not mentioned in the schedule annexed to his petition in this court, but the sum above mentioned (21,723*l.* 5*s.* 3*d.*) was stated as a part of the sum owing to his creditors, and the names of the provisional assignee of the Insolvent Court and of the creditors' assignee appointed in that court, were inserted as representing the body of creditors. It was objected on behalf of one of the two creditors in respect of whose debts the petitioner now sought to be discharged:—1st, That the petitioner having selected his own tribunal, by appealing to the Court for Relief of Insolvent Debtors, ought not now to be permitted to apply to another jurisdiction, as the vesting of his property in the officers of two distinct and independent tribunals would lead to a clashing of jurisdiction inconvenient and injurious to the interests of the creditors. On this point, *Ex parte Partington*, before Mr. Commissioner Evans, and *Ex parte Newland*, before Mr. Commissioner Fane, were cited. 2ndly, The Commissioner's attention was directed to the language of the petition, as given by the act of parliament, in which the petitioner stated, that his schedule contained a full and true account of his debts and the claims against him, "with the names of his creditors and claimants, and the dates of contracting the debts and claims severally, as nearly as such dates can be stated." And it was submitted that the petition was obviously untrue in this respect, inasmuch as the names of all the creditors whose debts were incurred previously to the petitioner filing his petition in the Court for the Relief of Insolvent Debtors had been omitted. Lastly, the 24th section of the 7 & 8 Vict. c. 96, was referred to, which provides, that if it shall appear to the commissioner that the debts of the petitioner, or any of them, were contracted by reason of any judgment in certain actions therein enumerated, of which an action for a "malicious trespass" was one, the commissioner should not be authorised in such case to name any day for making a final order; and the petitioner having stated in examination, that the action in which judgment as in case of a nonsuit had been obtained against him, was brought for the seizure of his goods under a fiat in bankruptcy, afterwards annulled, it was contended, that this was a judgment in an action for a "malicious trespass," within the meaning of the act of parliament.

Mr. Commissioner Holroyd did not think

that any of the objections urged were sufficient to prevent him from granting the petitioner a final order for protection. As to the first objection, in the cases cited, the parties petitioning this court at the time of their so petitioning this court, had petitions pending in the Court for the Relief of Insolvent Debtors. In the present case the petitioner had been discharged by the Court for Relief of Insolvent Debtors, and only came to this court to be relieved from two debts, from which his discharge from the Court for Relief of Insolvent Debtors did not relieve him. There was nothing in the statutes for the Relief of Insolvent Debtors which took away the jurisdiction of this court, because the party petitioning had previously petitioned the Insolvent Court, and subsequently incurred other debts. As to the second objection, that the petitioner neglected to insert the names of all his creditors, the schedule might be amended in this respect by filing a copy of so much of the schedule filed in the Insolvent Court as gave the names of the insolvent's creditors and the dates of contracting the several debts. As to the last objection, he (Mr. Commissioner Holroyd) was not called upon to decide, that the 24th section did not apply to plaintiffs in any of the actions therein enumerated; but it did not appear to him that the action in which judgment as in case of a nonsuit had been obtained against the petitioner, was an action for "malicious trespass," and he thought he was not bound on this ground to refuse the final order.

Upon making the amendment referred to, in his schedule, and payment of 10*l.* into court, the petitioner obtained his final order.

*In re James Phineas Davis.* 30th April, 1846.

## CHANCERY SITTINGS.

Master of the Rolls.

AT WESTMINSTER.

Friday . . .	May 22	Motions.
Saturday . . .	23	{ Petitions—The unopposed first.
Monday . . .	25	{ Pleas, Demurrers, Causes,
Tuesday . . .	26	{ Further Directions and
Wednesday . . .	27	{ Exceptions.
Thursday . . .	28	Motions.
Friday . . .	29	{
Saturday . . .	30	{ Pleas, Demurrers, Causes,
Monday . . .	June 1	{ Further Directions, and
Tuesday . . .	2	{ Exceptions.
Wednesday . . .	3	{
Thursday . . .	4	Motions.
Friday . . .	5	{
Saturday . . .	6	{ Pleas, Demurrers, Causes
Monday . . .	8	{ Further Directions, and
Tuesday . . .	9	{ Exceptions.
Wednesday . . .	10	{
Thursday . . .	11	{ Petitions—The unopposed first.
Friday . . .	12	Motions.

Short Causes, Consent Causes, and Consent Petitions, every Saturday at the sitting of the court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

## COMMON LAW SITTINGS.

### Queen's Bench.

#### MIDDLESEX.

##### In Term.

1st Sitting—Monday . . . . . May 25  
And two following days at Eleven o'clock.

2nd Sitting, Thursday . . . . . May 28  
And subsequent days at Eleven o'clock.

3rd Sitting, Wednesday . . . . . June 10  
At  $\frac{1}{4}$  past Nine o'clock precisely, for Undefended Causes only.

A list of such remanets as appear fit to be tried in Term will be printed immediately, but on the statement of either side that a cause is too long to be tried in Term, it will be withdrawn from such list, provided the other side have two days' notice of the application at the Marshal's to postpone, and do not oppose the application on good grounds—the usual number of completed and new causes will be put into the list day by day in their usual order.

Sittings after Term, Saturday . . . June 13

#### LONDON.

##### In Term.

Thursday (At Twelve) . . . . . June 11

For Undefended Causes and such as the Judge considers fit to be taken.

##### After Term.

Monday . . . . . June 15  
(To adjourn.)

## NOTES OF THE WEEK.

### POSTPONEMENT OF NISI PRIUS CAUSES IN THE EXCHEQUER.

GREAT disappointment is felt and expressed in consequence of the postponement of nearly the whole of the causes set down for trial at Nisi Prius in the Court of Exchequer at the sitting after Easter Term. There are only four days allowed for the trial of jury causes in Middlesex after Easter Term; and in the Court of Exchequer, three out of the four days were occupied exclusively in the trial of revenue informations, arising out of a single transaction, involving the loss to the public of the duty on twelve hogsheds of brandy, leaving only one day for the trial of all the civil causes in this court. The result of this arrangement was that only two or three cases have been tried, and the remainder of the causes set down for trial, exceeding fifty in

number, necessarily stand over until the next term, to the great delay, expense, and mortification of many of the suitors.

The Court of Exchequer was frequently fixed upon by attorneys and recommended by counsel, because there was no arrear of business in that court; but the result of the sitting which terminated on Wednesday last, deprives the court of this advantageous distinction.

### UNQUALIFIED PRACTITIONERS IN POOR LAW MATTERS.

The Court of Queen's Bench, in the case of the *Queen v. Buchanan*, has decided that an indictment will lie against any person practising at the quarter, not being an attorney or solicitor, such practising being contrary to the 2nd section of the 6 & 7 Vict., c. 73. The defendant having been indicted by the Kent Law Society for so practising, demurred to the indictment. The demurrer was not only overruled, but the court refused an application for leave to plead, saying the act of parliament was very plain, and the application to plead after demurring, unreasonable. We shall give an early report of the case.

### PROGRESS OF BILLS IN PARLIAMENT.

Lord Brougham's New Short Form Conveyancing Bill has been read a 2nd time *pro forma*.

The General Registry Bill has been postponed by Lord Campbell till the Corn Bill shall have passed.

## THE EDITOR'S LETTER BOX.

We beg the attention of our readers to some notes on the new rules relating to examination, administration, and annual certificates, at page 50, *ante*. The notices for the Master are to be given *three* days at the least before term, as heretofore.

The names of the candidates who passed last term shall be given in our next number, if practicable.

We have received a communication relating to a proposed Articled Clerks' Society, the design of which shall be considered (we hope in our next number); and we recommend the promoters to consult the several solicitors to whom they are articulated.

"Sub-Articulis" is, perhaps, a little too sanguine as to the expected admission as well of *articled clerks* as of the "students, members of the Inns of Court," to the intended Lectures at the Middle Temple. We will inquire and report.

"A. W.'s" case should be submitted to his legal adviser. We cannot answer points of this kind.

# The Legal Observer.

SATURDAY, MAY 23, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## THE CHARITABLE TRUSTS AND SMALL DEBT BILLS.

We class together the parliamentary proceedings on these two bills, although the former has just been negatived, and the latter is only just announced. The Charitable Trusts Bill, however well designed, was calculated in its present shape to withdraw a large part of the appropriate business of the Courts of Equity, and place it in the hands of government commissioners and their itinerant assistants,—the field of whose labours would extend over upwards of forty thousand charities, possessing an annual income of a million and a half.

The Small Debts bill is plainly designed to transfer a very large portion of the common law business from the Superior Courts at Westminster to petty courts, and inferior officers scattered all over the kingdom. The occupation of both sides of Westminster Hall would soon be gone. The removal of the courts would be needless, and the projected improvements in legal education might be again abandoned.

For the present, however, there is one side of the old hall which has been preserved from serious injury. We proceed to record the substance of the debate on the 18th instant.

### THE CHARITABLE TRUSTS BILL.

The Lord Chancellor supported the measure by a speech marked by his never-failing ability,—wherein he exposed the abuses of some of the charitable institutions, one of which he visited with lively sarcasm, and made out a strong case in favour of a cheaper mode of redress than

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at present exists in the Court of Chancery.

On the other hand, Lord *Cottenham* well defended the court over which he had so ably presided. Since the recent improvements, as well in the proceedings and practice of the court, as in the increase of efficient officers, ample means are afforded for doing justice in all cases of abuse of trust. By abolishing the fees of office in small charities, and simplifying the mode of procedure, redress might be obtained at less expense than under the proposed commission. The Court of Chancery is in a powerful and efficient state, well calculated to perform the duties assigned to it, and quite equal to carrying out the objects of the present measure.

Lord *Brougham* came zealously to the support of the bill, and adduced several instances of abuse, which he stated with his usual point and potency.

He was followed by the Earl of *Eldon*, who opposed the measure because it would check the exercise of charity, and prevent persons from acting as trustees under the objectionable provisions of the bill.

Lord *Campbell* expressed himself to be favourably disposed to some measure for diminishing the expense of proceedings in regard to small charities, but strongly condemned the present proposition.

The Bishop of *Salisbury*, Lord *Abinger*, and Lord *Wrottesley* supported the bill. The debate lasted till past twelve o'clock, when the votes for the second reading were forty, and against it forty-one. So ends the proposition for the present session.

### THE SMALL DEBTS BILL.

Our readers are aware that there are several bills before parliament for esta-

blishing local courts. Amongst others for the extensive Hundred of Salford, in Lancashire, and for the whole county of Somerset. These measures are highly objectionable both in principle and detail, and even if unobjectionable, appear to be wholly uncalled for at the present time, because last session a general measure was passed, authorizing the enlargement of the districts of all the existing local courts, and extending their jurisdiction to £20.

It now appears that government has very properly determined to stop these individual measures, and to bring in a bill for effectuating the general principle of the Small Debts Act of last session. A comprehensive measure would certainly be preferable, in case any further change is to take place, but we trust the *concurrent jurisdiction* of the superior courts, in all matters above £10, will still be preserved.

The following is a report of what passed in the House of Commons on the 19th instant:

Mr. R. V. Smith inquired whether the government intended to introduce a general small debts bill, as he understood they had stopped all the local bills that were before the house.

Sir James Graham replied that he had certainly notified to the parties promoting local bills for the establishment of small debts courts, that they should suspend them till opportunity was afforded to the government of introducing a general measure. The president of the council was about to introduce into the other house a bill which would be the complement of the measure adopted last session, carrying it into general execution without further legislative interposition. The bill would enable the Queen in council to establish courts throughout England and Wales for the trial of causes for the recovery of debts under £20 before a qualified judge, to regulate the procedure universally, and (as we understood) to establish a code of fees.

### PROPERTY LAWYER.

#### STAY OF PROCEEDINGS BY SUB-LESSEE, UNDER 4 GEO. 2, c. 28, s. 4.

A QUESTION of some importance, upon the construction of the stat. 4 Geo. 2, c. 28, s. 4, was lately discussed in the Court of Common Pleas,\* the result of which appears to be, that a sub-lessee is entitled

to a stay of proceedings in an action of ejectment for non-payment of rent, upon payment of the rent and costs, in the same manner as the lessee or his assignee would be under the words of the statute, and that it is not necessary in such a case to resort to a Court of Equity for relief.

The facts of the case upon which this decision proceeded were shortly as follow. Wyatt, the lessor of the plaintiff, demised five houses at Paddington to one Steel, who, subsequently becoming insolvent, transferred all his interest in the premises, save and except the last two days of the term, to Byron (the defendant) as trustee for the benefit of his creditors. The lease contained various covenants to be performed by the lessee; but the proviso for re-entry was confined to a breach for non-payment of rent. Wyatt brought an action of ejectment for non-payment of rent and other breaches of covenant; and Byron took out a summons to stay proceedings upon payment of the amount due for rent and costs, under the 4 Geo. 2, c. 28, s. 4; and obtained an order limiting the stay of proceeding to the forfeiture for non-payment of rent. The argument arose upon a rule to rescind that order, on the ground that the provision of the act referred to applied only to tenants or their assigns, neither of which character was filled by the defendant,—Steel, the lessee, having reserved to himself a reversion of two days.

The language of the 4th section, on which the point ultimately turned, is as follows:—"That if the tenant or tenants, his, her, or their assignee or assignees, do or shall at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, his, her, or their attorney in that cause, or pay into the court where the same cause is depending, all the rent and arrears, together with the costs, then and in such case all further proceedings on the said ejectment shall cease and be discontinued; and if such lessee or lessees shall, upon such bill filed as aforesaid, be relieved in equity, he, she, and they shall have, hold, and enjoy the demised lands according to the lease thereof made, without any new lease to be thereof made to him, her, or them." The question was whether the defendant, being a sub-lessee, was within the protection of the clause, and the difficulty that at first presented itself to the judges was, that there was no privity between the defendant and the landlord,

\* *Doe d. Wyatt v. Byron*, 1 Com. B. R. 623; 3 D. & L. 31.

and that extending the remedy to a person holding the position the defendant did, was, in fact, extending it to one who was not bound to perform the covenants of the lease; but subsequently the court considered, that the case ought not to be decided upon the particular circumstances of difficulty in which the landlord had placed himself, by neglecting to extend the proviso for re-entry to a breach of any of the covenants, and that the point should be decided as if all the covenants but payment of the rent had been duly performed.

The question on which the judgment of the court proceeded was, whether the words "tenant or assignee" in the fourth section could be extended to a sub-lessee? In considering that question, the court felt itself at liberty to resort to other sections of the act. The second section gave certain facilities to landlords. If an action of ejectment were brought by a landlord for non-payment of rent, it enacted, that in case the lessee or assignee, or other person claiming or deriving under the lease, allowed the action to go on to judgment and execution without paying the rent and costs, and without filing any bill for relief in equity within six months after such execution executed, then the lessee or assignee, or other person claiming and deriving under the lease, should be barred from all relief in law or equity. The third section provided that in case the lessee, or his assignee, or other person "claiming any right, title, or interest in law or equity, of, in, or to the said lease," should, within the time mentioned in the previous section, file a bill in equity for relief, unless he should, within forty days after the filing of the answer, pay the rent and costs into court, he should not have an injunction to restrain the proceedings at law. The persons debarred of remedy by those clauses were the lessee or lessees, his, her, or their assigns, or sub-lessees, or other persons claiming or deriving under the lease, and the 4th section, which was intended for the benefit of the tenant or lessee, ought, if possible, to be construed, so as to make its operation co-extensive with that of the previous sections, and sufficient to embrace all those whose remedy was thereby barred. In order to put a consistent construction upon the whole act, the judges thought, they were at liberty to construe the word "tenant" in the 4th section as meaning something more than lessee or

assignee, and that it comprehended persons circumstanced like the defendant. In the course of the argument, and again in pronouncing his judgment, *Erle, J.*, ingeniously observed, that in the 2nd section the expression occurred "tenant in possession of the premises," and that any person may be the tenant in possession in an action of ejectment; and he inclined to think the word "tenant" in section 4 was used in the modern sense, in the same sense in which it was used in the action of ejectment, meaning the person against whom the ejectment was brought. Upon these grounds the court held that the order for a stay of proceedings, on payment of rent and costs, ought to stand.

If the view taken by Mr. Justice *Erle* of the meaning attachable to the word "tenant," as used in the 4th section, be well founded, it may be thought that it places this decision of the Court of Common Pleas on a more satisfactory basis than if it proceeded merely upon the change of phraseology to be found in the several clauses of the act.

## LAW OF ATTORNEYS.

### BILL OF COSTS PAID UNDER PRESSURE.— TAXATION.

By the act 6 & 7 Vict. c. 73, consolidating and amending the laws relative to attorneys and solicitors, it is provided, (section 37,) that no action or suit shall be brought to recover payment of a bill of costs till the expiration of one month from the delivery thereof; and the party chargeable by such bill, if he omit for a year to apply for a reference to taxation, can only obtain it afterwards under *special circumstances*, to be proved to the satisfaction of the court or judge to whom the application for such reference shall be made.

By the 41st section, even the fact of payment of a bill of costs will not preclude the court from referring it to taxation, if the circumstances of the case require it, provided the petition for a reference be presented in proper time, that is to say, within a year from the delivery of the bill.

It requires, however, a strong case against a solicitor when the client applies for a taxation of the bill *after payment*; for to be sure the client is not after payment to have a taxation merely for asking it. There are, however, various grounds on which even after payment a taxation will be granted. One of these is *pressure*;



the nature of which, with reference to the question of taxation, is not altered by the provisions of the statute; so that cases before its enactment may still be cited in illustration of the maxims of the court.

By pressure is not necessarily meant a pressure of the solicitor's creation. It may be occasioned by the severity of third parties—or it may be wholly referable to the client's own folly or misconduct. And the solicitor's services may have been instrumental in rescuing him from the consequences of that folly or misconduct. Still, if the bill be shown to have been paid under a pressure, which, from whatever cause arising, incapacitated the client from a due exercise of circumspection and deliberation, and if the solicitor avail himself of that pressure, the bill will be referred to taxation.

Let us look back upon a case\* decided upwards of a century ago by Lord Chancellor *Hardwicke*, in which that great judge expressed himself in a manner which would of itself have justified the eulogy of Lord *Mansfield*, who had so long practised in his court—that when “Lord *Hardwicke* pronounced his decrees, the genius of justice might be presumed to preside.”

In the year 1728, Japhet *Cook*, (a notorious rogue of the period,) being under prosecution for perjury and forgery, employed one Mr. Booth as his attorney to get bail for him; which Booth accordingly procured. Booth then drew the will of *Cook*, who gave instructions for it himself in writing, in which, with his own hand, he directed a legacy of 1,000*l.* to Booth, and 500*l.* a-piece to the bailmen. The will thus prepared by Booth was duly executed by *Cook*. But this was not all, for Booth afterwards prevailed on *Cook* to give him a bond to secure his legacy. Nevertheless, *Cook* subsequently revoked the will, and by another will appointed Mary *Walmisley* his executrix, making her also his residuary legatee, whereby she became entitled to 17,000*l.* And by this, his second will, the testator declared, that the procuring the legacy from him by Booth was through imposition. *Cook* died in 1734, and thereupon judgment having been recovered by Booth upon the bond,—the bill was filed to be relieved against it as fraudulently obtained. But upon argument, Lord *Hardwicke* refused to interpose, being on the whole of opinion, that the injunction which had been obtained to stay proceedings at law must be dissolved.

Two years after this, however, the case having been re-heard, Lord *Hardwicke* altered his opinion,—observing with a candour and greatness of mind deserving of all imitation, “that upon the case being re-argued and re-considered, he was thoroughly convinced his former decree was wrong.”

The first consideration arose, he said, upon the general nature of the bond, as it was obtained by an attorney from his client, while the client was under criminal prosecutions. This was a very material ingredient in the case; for since the act of parliament, 2 Geo. 5, c. 23,—attorneys and solicitors were to be considered as officers of justice. They were bound, (when retained) to appear for their clients—and on the other hand, when a person had made choice of an attorney in a cause, he was not at liberty to charge him without express leave of the court. The consequence of which was, that a strong alliance subsisted between an attorney and his client; and there was a great obligation on the attorney to attend to the client's interest. Now *Cook* was under prosecution for two different offences of a very heinous nature, for which he afterwards suffered as he deserved; and it concerned him very much to find out persons who would be bail for him. Many people, doubtless, brought distress on themselves; but while they were in such a situation it did not make the least difference whether this came on them through their fault or their misfortune. It had been said that *Cook* was a very cunning fellow, and a very great knave; and his lordship believed it. But it would be very mischievous if there were any encouragement to an undue advantage taken of another under such circumstances. Now, what was the defendant's merit as to this bail? It did not appear that he gave any counter security to the bail; so that he had in fact done nothing more than what every attorney did in the common cases of bail. The question then came to this,—whether the bond might stand as a security for such services as the defendant had really done, and for such demands as were justly due. It was, therefore, referred to the master to inquire what extraordinary services the defendant had done to entitle him to any reward, and what was justly due to him in respect thereof.

This case, therefore, proceeded purely on the principle of *pressure*—a pressure not caused by the attorney, but on the

\* *Walmisley v. Booth*, 2 Atk. 25.

contrary, in some measure relieved by him. And the circumstance of the client being a forger and a perjurer, whose pressure was occasioned by his own iniquities, made no difference. It is true the case was not precisely that of a bill of costs. But the rule is the same.

To show that these principles are still acted upon, we have only to refer to the last number of Mr. Collyer's Reports, p. 92, where we find that in *ex parte Wilkinson*, Vice-Chancellor *Knight Bruce*, in a case where a bill of costs had been paid under circumstances of pressure, referred it to taxation;—remarking, that “he gave no opinion whatever, whether it would be considerably reduced or reduced at all by the taxation—no opinion for or against a single item—either as to amount or as to principle; he directed the taxation on the simple and sole ground, that the bill was paid under circumstances of pressure—meaning no censure on the gentlemen who received the money—or intimating or suggesting that the pressure (which in this case was referable to them) was improper.”

## ADMISSION OF SOLICITORS IN CHANCERY.

*Secretary's Office, Rolls, May, 15, 1846.*

THE Master of the Rolls has appointed Wednesday, June 10th, at the Rolls Court, Chancery Lane, at a quarter-past three in the afternoon, for swearing solicitors.

Every person desirous of being sworn on the above day must leave his common law admission or his certificate of practice for the current year at the secretary's office, Rolls Yard, Chancery Lane, on or before Tuesday, June 9th.

## BARRISTERS CALLED.

*Easter Term, 1846.*

### LINCOLN'S INN.

Francis Kyffin Lenthall, Esq.  
John Coppin, Esq., M. A.  
Thomas Sampson Darnbrough, Esq., M. A.  
William Austin, Esq., M. A.  
Henry Thomas Cusack, Esq., M. A.  
Montague Bernard, Esq., M. A.  
Reginald Robert Walpole, Esq., M. A.  
Charles Cardwell, Esq., M. A.  
Edward Kent Karslake, Esq., M. A.  
Charles Cust Burges, Esq., M. A.  
Charles Watkin Williams Wynn, Esq., M. A.

Francis Henry Deane, Esq., M. A.  
Berdmore Compton, Esq., M. A.

### INNER TEMPLE.

Robert Shackleton Eastwood, Esq., M. A.  
Robert Mathews Heron, Esq.  
John Sheehan, Esq., M. A.  
Thomas Lawrence Yeoman, Esq., M. A.  
William Everett, Esq., M. A.  
John Riley, Esq., M. A.  
John Darling, Esq., M. A.

### MIDDLE TEMPLE.

Charles Newton, Esq., Caius College, Cambridge.  
Edward Morris, Esq.  
Charles Frederick Stovin, Esq.  
James Cove Jones, Esq.  
William Henry Doyle, Esq.  
Evelyn Boscawen, Esq., Ch. Ch., Oxford.  
Gerard Roope, Esq.  
Archer Gurney, Esq.  
William Horton Claridge, Esq.  
William Frederick Browne Staples, Esq.  
John Godfrey Bellinger Hudson, Esq.  
Donald Malcolm Logie, Esq.  
John Harry Lee Wingfield, Esq., B. A.  
Henry William Morris, Esq.  
Delabere Robertson Blaine, Esq.  
Fielding Nalder, Esq., B. A.  
John Bower, Esq., Mag. Coll. Oxford.  
Edgar Kedington Rodwell, Esq.

### GRAY'S INN.

29th April, 1846.

Wilkinson, James John, Esq.  
Way, Benjamin, Esq., B. A.

## RAILWAY LITIGATION.

AN able pamphlet has just been published by Mr. Thomas Turner à Beckett, in which he treats of railway litigation, and how to check it; with remarks on the proposed railway relief bill, and suggestions for regulating the future conduct of railway enterprise. He comments with much force and animation on both the merits and mischiefs of railway projects. On the one hand, he points out the faults of all parties in many of the schemes:—projectors, provisional committees, directors, and allottees; and, on the other, the unfairness and injustice to which many useful projects have been subjected by the refusal of the allottees to pay the calls on them. We shall endeavour to find room for the remedies suggested in our next number.

## LORD BROUGHAM'S SHORT-FORM CONVEYANCING BILL

WE stated the clauses of this Short-Form Bill in our last number, and now add part of the Schedule. It is too long for entire insertion at present, and perhaps the following may be a sufficient specimen of the intended working of the act.

### THE SCHEDULE TO WHICH THE ACT REFERS.

#### *Directions as to the Forms :*

1. Any form contained in Column I. may be altered by substituting any word, number, names, words, or numbers for any word, number, letters, words, or numbers contained therein within brackets; and when any such substitution shall be made the corresponding form in Column II. shall be taken to be altered by making a similar substitution for the same, or the corresponding word, number, letters, words, or numbers contained therein within brackets, when and so often as the same shall occur therein.
2. Any form contained in Column I. may be altered by omitting any word, number, letters, words, or numbers contained therein within brackets; and when any such omission shall be made the corresponding form in Column II. shall be taken to be altered by omitting the same, or the corresponding word, number, letters, or numbers contained therein within brackets, when and so often as the same shall occur therein.
3. The words "he," "his," "him," and "himself," used in the forms in Column II. in reference to trustees and executors shall, where occasion requires, include and be applied to females.

[The forms contained in this schedule are, with few exceptions, adapted both to deeds and wills, and though classed under the head of settlements for the sake of arrangement are capable of being used in other cases. The parts of deeds or wills, such as the descriptions of persons and of circumstances, which are of too variable a nature to be annexed to the forms given without interfering with their use, are omitted. The words in italics running across the page are introduced for the purpose of representing these variable parts, so far as appear necessary to render the forms given intelligible, and are not intended in any way to restrict the manner or place in which the forms are to be introduced or used.]

#### *Table of the Forms contained in the Schedule.*

<p><b>SETTLEMENT AND WILLS OF REALTY.</b>  General Limitations of Uses and Trusts, No. 1 to 4.  General Forms relating to Appointments, 5 to 11.  Limitation of Rent charge, 12, 13.  Powers of Distress and Entry, 14, 15, 16.  Limitations, 17, 18, 19.  Trusts of Pin Money Term, 20 to 25.      Separate Use Clause, 22, 23.      Ultimate Trust and Cesser of Term, 24, 25.  Trusts of Jointure Term, 26.  Trusts and Provisions as to Portions, 27 to 45.  Powers, 46 to 86.      Commencements, 46, 47.      Power of Jointuring, 48 to 51.      Power of charging Portions, 52 to 56.      Power of leasing for Lives, 57 to 61.      Power of leasing for Years, 62, 63.      Power of granting Building Leases, 64 to 68.      Power of granting Mining Leases, 69 to 74.      Power of Revocation and new Appointment, 75 to 77.      Power to cut Timber, 78.      Power to work Mines, 79.      Power of Enfranchisement, 80.      Power to make Partition, 81, 82.      Power of Sale and Exchange, 83 to 86.</p>	<p>Trust for Investment, 87 to 93.  Trust for Accumulation, 94 to 97.  Proviso for marshalling Powers, 98.    <b>SETTLEMENT OF LEASEHOLDS, 99 to 103.</b>    <b>SETTLEMENT BY CONVEYANCE IN TRUST FOR SALE, 104.</b>    <b>SETTLEMENTS AND WILLS OF PERSONALTY.</b>  Provisions for Children, 105 to 107.  Trust for Accumulation, 108 to 110.  Ultimate Trusts, 111, 112.  Trust for Conversion and Re-conversion, 113 to 115.    <b>SETTLEMENT AND WILLS GENERALLY.</b>  Power to appoint new Trustees, 116 to 119.  Trustees Indemnity Clause, 120.  Trustees Receipt Clause, 121.    <b>SETTLEMENTS.</b>  Covenant to settle future Property, 122 to 128.    <b>WILLS.</b>  Residuary Devise of Realty, 129.  Charge of Legacies upon Realty, 130 to 132  Residuary Bequest, 133.  Trust for Conversion, 131 to 135.  Provision for annual Payments, 136.  Power to compromise, 137.  Devise of Mortgage Estates, 138.</p>
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SETTLEMENT AND WILLS OF REALTY.  
General Limitations of Uses and Trusts.  
*The Property is conveyed,*

COLUMN I.

COLUMN II.

1. To such uses and on such trusts,

2. Upon such trusts,

3. To the uses of such persons, on such trusts, subject to such charges and with such remainders.

4. To the use of [A. B. & C. D.] for [five hundred] years, from [the said marriage], upon the trusts herein declared, and afterwards.

5. As [A. B.], notwithstanding her coverture, shall appoint.

6. As [A. B. & C. D.] shall by deed executed by them appoint.

7. Or as the survivor shall

8. Or as [A. B.], if [he] survives, shall

9. By deed executed by [him], or [his] will,

10. By deed executed by [him],

11. And in default of appointment,

1. To such uses, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations,

2. Upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations,

3. To the use of such person and persons, for such estate and estates, upon and for such trusts, intents, and purposes, subject to and charged and chargeable with the payment of such sum or sums of money, by way of annuity or in gross, with, under, and subject to such powers, provisoes, restrictions, conditions, and with such limitations and remainders over,

4. To the use of [A. B. & C. D.] for and during and unto the full end and term of [five hundred] years, to commence and be computed from [the said marriage], and thenceforth next ensuing, fully to be complete and ended, without impeachment of waste, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, herein expressed and contained of and concerning the same; and from and after the expiration or sooner determination of the said term of years, and in the meantime subject thereto and to the trusts thereof.

*General Forms relating to Appointments.*

*The Property is conveyed to such Uses, (see Nos. 1, 2, 3.)*

5. As the said [A. B.] shall, notwithstanding her coverture, and as if she were sole and unmarried, from time to time direct, limit, or appoint.

6. As the said [A. B. & C. D.] during their joint lives shall from time to time by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by them sealed and delivered in the presence of and to be attested by two or more credible witnesses, jointly direct, limit, or appoint.

7. And in default of any such joint direction, limitation, or appointment, and so far as any such joint direction, limitation, or appointment shall not extend, then as the survivor of them shall

8. And in default of any such joint direction, limitation, or appointment, and so far as any such joint direction, limitation, or appointment shall not extend, as the said [A. B.], in case [he] shall survive the said [C. D.], shall

9. By any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by [him] sealed and delivered in the presence of and attested by two or more credible witnesses, or by [his] will and testament in writing, or by any codicil or codicils thereto, to be executed by [him] in the presence of and attested by two or more credible witnesses,

10. By any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by [him] sealed and delivered in the presence of and attested by two or more credible witnesses.

*Direct, limit, or appoint.*

11. And in default of and until any such direction, limitation, or appointment, and so far as any such direction, limitation, or appointment shall not extend,

*Limitation of Rent-charge.*

*The Property limited to the Use that after A. B.'s death, C. D. may receive during her life the rent charge of [£ ]*

12. The said rent-charge to be in bar of dower of [C. D.] out of the estates of [A. B.];

12. The said annual sum or yearly rent-charge to be in full for the jointure of the said [C. D.], and in lieu, bar, and satisfaction of all dower and free-bench, which at common law or by custom or otherwise she might have claim or demand in or out of all or any hereditaments whatsoever of which he the said [A. B.] now is, or shall during

13. To be payable out of the [premises hereby settled] free from deductions.

the said coverture, be seised for an estate of inheritance, or any other estate to which dower or free-bench is incident;

13. To be chargeable upon, and yearly issuing and payable out of all and singular the [hereditaments and premises hereby settled] free and clear of all deductions for present or future taxes or impositions, or any other matter, cause, or thing whatsoever.

### *Power of Distress and Entry.*

14. If the rent-charge of [one hundred pounds] is in arrear for [twenty-one] days,

14. In case the said annual sum or yearly rent-charge of [one hundred pounds], or any part thereof, shall at any time or times during the time that the same shall continue payable, under the provisions herein contained, be in arrear or unpaid by the space of [twenty-one] days next after any one of the days hereinbefore mentioned and appointed for the payment of the same, then and so often as the same shall happen,

15. [A. B. and her] assigns may distrain upon the premises for the arrears and expenses.

15. It shall be lawful for the said [A. B. and her] assigns, although no legal or formal demand shall be made thereof, or for the arrears thereof, from time to time to enter into and distrain upon the said hereditaments and premises charged with the same annual sum or yearly rent-charge, and from time to time take, lead, drive, carry away, and impound, and in pound to detain and keep, the said distress or distresses then and there found, until the same annual sum or yearly rent-charge, and all arrears so unpaid, together with all costs, charges, and expenses occasioned by reason of the non-payment thereof, and incurred by taking and keeping such distress or distresses, shall be fully paid and satisfied; and in default of payment thereof, or any part thereof respectively, in due time after such distress or distresses shall be taken, to appraise, sell, and dispose of, or cause to be appraised, sold, and disposed of, such distress or distresses, and otherwise to act therein according to due course of law, in case of distress for rent reserved upon a lease, To the end and intent that the said [A. B. and her] assigns shall and may be fully paid and satisfied the same annual sum and yearly rent-charge, and all arrears thereof, and all costs, charges, and expenses attending the non-payment and recovery of the same.

*And if the Rent-charge is in arrear for Forty Days. (see No. 14.)*

16. [A. B.] and [her] assigns may take and retain possession of the premises till the rent-charge and all expenses are satisfied.

16. It shall be lawful for [A. B.] and [her] assigns to enter upon and take possession of all and singular the hereditaments and premises last mentioned, or any part or parts thereof, and to have, hold, occupy, possess, and enjoy the same, and have, receive, and take the rents, issues, and profits thereof, and of every part thereof, to and for the proper use and benefit of the said [A. B.] and [her] assigns, until such time as the same annual sum or yearly rent-charge, and all arrears thereof, and all such arrears of the same as shall grow due during the time that the said [A. B.] or [her] assigns shall, by virtue of such entry or entries, be in possession of the said hereditaments and premises, or any part thereof, together with all costs, charges, and expenses whatsoever attending or to be occasioned by the non-payment or recovery of the same or any part thereof, or in relation thereto, shall be fully paid and satisfied; and such possession, when taken, shall be without impeachment of waste.

### *Limitations.*

17. The first and every other [son] and [sons] of [A. B. by C. D.] successively in tail [male]; remainder,

17. The first and every other lawful [son] of the body of [A. B. by C. D.] severally and successively, and in remainder one after another, in order and course as they respectively shall be in priority of birth and seniority of age, and the heirs [male] of the body and respective bodies of all and every such [sons] and [son] issuing, the elder of such [sons], and the heirs [male] of the body of such elder [son] being always to take before and be preferred to the younger of such [sons], and the heirs [male] of the body and respective bodies of such other [son] and [sons] and in default of such issue,

*To children as Tenants in Common; and on the death of any,*

18. The original and accrued shares of such [child], or [children].

18. As well the original part or share hereby limited to or provided for such [child] or [children] which shall belong to the [child] or [children] so dying as aforesaid, as also the part or share or several and respective parts or shares which such [child] or [children] respectively shall take under this present limitation or provision.

19. The original and accrued share of the [child] or [children] whose issue so fails,

19. As well the original part or share hereby limited to or provided for the [child] or [children] of whose issue there shall be such failure as aforesaid, as also the part or share or several and respective parts or shares which such [child] or [children], or the issue of such [child] or [children] respectively, shall take under this present limitation or provision.

*Shall go over to the others.*

*Trusts of Term for raising Pin Money.*

*The Term is limited in trust that A. B. and C. D. shall,*

20. Out of the premises comprised in the last-mentioned term, raise

20. Out of the annual income and profits of the said hereditaments and premises so limited to or vested in them as aforesaid, or by demising, leasing, selling, or mortgaging the same, or a competent part or competent parts thereof, for the whole or any part of the said last-mentioned term, or by bringing actions against the tenants and occupiers of the same premises for recovery of the rents and profits, or by all or any of the aforesaid or by any other reasonable ways and means which they or he shall think proper, levy and raise

21. An annuity of [one hundred pounds] free of deductions, payable

21. The annual sum of [one hundred pounds], free and clear of and from all deductions for present or future taxes or impositions, or any other matter, cause, or thing whatsoever, and shall pay, apply, and dispose of the said annual sum of [one hundred pounds].

*By equal quarterly Payments, on [ ]*

22. To [A. B.] for her separate use, exclusively of [C. D.]

22. Into the hands of the said [A. B.] for her sole and separate use and benefit, independently and exclusively of [C. D.], and without being in anywise subject to his debts, control, interference, or engagements; and her receipts, notwithstanding her coverture, shall be from time to time discharges for the same.

23. Without power of anticipation.

23. But so nevertheless that she shall not have power to dispose of or affect the same, or any part thereof, by any sale, mortgage, or charge, or otherwise in the way of anticipation, and that no other receipts but receipts given by her for sums then become due shall be discharges for the same.

24. And shall permit the reversioner to receive the surplus income.

24. And upon this further trust, that they the said trustees and trustee for the time being of the same term shall permit and suffer the person or persons who under the limitations aforesaid shall for the time being be entitled to the reversion or remainder of the hereditaments and premises comprised in the said term immediately expectant upon the determination thereof, from time to time to receive and take the whole or any part, as the case may be, of the rents, issues, and profits of the hereditaments and premises comprised in the same term, which shall not be wanted for the purposes for which the same term is hereby created, for his, her, and their own use and benefit.

25. Provided that the last-mentioned term shall cease when the trusts and expenses are satisfied.

25. Provided always, that when the trusts hereinbefore declared of and concerning the said last-mentioned term shall have been fully performed and satisfied, or shall have become unnecessary or incapable of taking effect, and the said trustees and trustee thereof, and each of them, their and each of their executors, administrators, and assigns, shall have been fully reimbursed and satisfied all costs, charges, and expenses (if any) occasioned by or relating to the trusts hereby reposed in them, which they are hereby authorized and empowered to levy and raise by all or any of the ways and means aforesaid, or by any other reasonable ways and means, and to retain accordingly, the same term (subject and without prejudice to any disposition which shall have been made of the premises comprised therein, or any part thereof, in pursuance of the trusts aforesaid), shall absolutely cease and determine.

*Trusts of Term for raising Jointure.*

*The Term is limited in trust that A. B. and C. D. shall, if the Jointure is in arrear, (see No. 14), raise out of the Premises comprised in the said Term (see No. 20) and*

26. Pay to [C. D. her] arrears and the expenses.

26. Pay the said last-mentioned annual sum or yearly rent-charge, or so much thereof as shall be so in arrear, and all expenses which the said [C. D. her] executors, administrators, or assigns, or the said last-mentioned trustees or trustee, or any of them, shall sustain or be put unto by reason of the non-payment thereof, or otherwise in the execution of the said trusts or in relation thereto.

*For the ultimate Trust and Proviso for Cesser, see No. 24 and 25.*

*Trusts and Provisions as to Portions.*

*If there shall be any Children of A. B. by C. D. other than an eldest Son, the Trustees of the Term shall raise (see No. 20,) any Sum of Portions, to vest in and be paid to*

27. Each [or any exclusively] of such [child or children], in such shares and manner,

27. Each and every [or such one or more exclusively of the other or others] of such [child or children], with such provisions for his, her, or their respective maintenance or education, and at such age, day, or time, or respective ages, days, or times, and if there shall be more than one, in such parts, shares, and proportions, and charged with such annual sums of money and limitations over for the benefit of the other or others of such [child or children], or any of them, and upon such conditions, with such restrictions, and in such manner,

28. Each [or any exclusively] of such [child or children] or their issue [born in the lifetime of the survivor of A. B. and C. D.], in such shares and manner,

28. Each and every [or such one or more exclusively of the other or others] of such [child or children] and each and every [or such one or more exclusively of the other or others] of any issue [born in the lifetime of the survivor of the said A. B. and C. D.] or any such [child or children], with such provisions for his, her, or their respective maintenance or education, and at such age, day, or time, or respective ages, days, or times, and if there shall be more than one, in such parts, shares, and proportions, and charged with such annual sums of money and limitations over for the benefit of the other or others of them or any of them, and upon such conditions, and with such restrictions, and in such manner,

*As A. B. and C. D. shall appoint (see Nos. 6 to 10.)*

29. But no [child] to have less than [one-third] of his or her share.

29. But nevertheless so that no such [child] who shall live to attain the age of twenty-one years shall, by reason of any appointment made in pursuance of any power herein contained, be deprived of more than [one-third] of the portion or share to which he or she would be entitled if no power of appointment of a portion to any such [child] as aforesaid had been exercised, and the last appointment or appointments which shall be made to the prejudice of any such [child] shall be void so far as the same, if valid, would deprive any such [child] of the proportion of his or her share hereby secured to him or her.

*And in default of Appointment (see No. 11.)*

30. The [sum raised for portions] to be paid to such [child] or [children], if sons, at twenty-one, if daughters, at twenty-one, or marriage [with the consent in writing of parents or guardians.]

30. The said [sum raised for portions] if there shall be but one such [child] to vest in such only [child] being a son, at his age of twenty-one years, and being a daughter at her age of twenty-one years, or day of marriage under that age [with the consent in writing of her parent or parents, or guardians for the time being], and to be paid to him or her at the same age, day, or time, and if there shall be two or more such [children], then to vest in and be paid between or among them in equal shares; the share of each of them who shall be a son to vest in him at his age of twenty-one years, and the share of each of them who shall be a daughter, to vest in her at her age of twenty-one years, or day of marriage under that age [with the consent in writing of her parent or parents or guardian or guardians for the time being], and to be paid to him, her, or them respectively at or on the same ages, days, or times respectively.

31. After the death of the survivor of [A. B. and C. D.],

31. If the same shall respectively happen after the decease of them the said [A. B. and C. D.] and the survivor of them; but if the same shall happen in the lifetime of them or of the survivor of them, then immediately after the decease of such survivor.

32. After the death of [A. B.] 32. If the same shall respectively happen after the decease of the said [A. B.]; but if the same shall happen in the lifetime of the said [A. B.], then immediately after the decease of the said [A. B.]
33. After my death 33. If the same shall happen after my decease; but if the same shall happen during my life, then immediately after my decease.
34. If any such [child] shall die, 34. If there shall be more than one [child] for whom portions are intended to be hereby provided, and any one or more of them shall die before the share hereby intended for him, her, or them respectively shall so become vested as aforesaid, then if no direction or appointment in exercise of any power herein contained shall be made to the contrary,
35. Or become an eldest or only [son] before [his] share is vested, 35. Or if any younger [son] shall become an eldest or only [son] entitled as aforesaid, before [he] shall acquire a vested interest or interests in the said sum herein provided for portions or any part thereof, under or by virtue of the limitations herein contained respecting the same, then
36. The share of such [child or children] shall accrue to the others. 36. As well the original share hereby provided for each of such [child or children] as last aforesaid as the share or shares which by virtue of this present clause shall have survived or accrued to him or her respectively, or so much thereof respectively as shall not have been previously applied for his or her preferment or advancement in the world by virtue or in pursuance of any power or powers herein for that purpose contained, shall go, accrue, and belong to the survivor and survivors or other and others of them, and shall vest in and be paid to him, her, or them (if more than one) in equal shares and proportions, at such time and times and in such manner as is herein expressed and declared touching or concerning his, her, or their original portion or portions, or as near thereto as circumstances will admit.
37. No [child or children] shall be entitled to more than 37. No such [child or children] shall, by virtue of or under the trusts of these presents, be, by survivorship or otherwise, entitled to have any greater sum of money for his, her, or their portion or portions than is or are hereinafter mentioned, (that is to say) the sum of
38. No [child] shall take any unappointed part of the [sum raised for portions] without bringing the appointed part into hotchpot. 38. No [child] taking any part of the said [sum raised for portions] under or by virtue of any direction or appointment to be made in pursuance of any power or powers herein for that purpose contained, shall be entitled to any share of or in the unappointed part thereof, without bringing his or her appointed part into hotchpot, and accounting for the same accordingly.
39. No [son] entitled under [these presents] to the income of the [premises] shall have any portion of the [sum raised for portions]. 39. No eldest or only [son] who, by virtue of or under limitations contained in [these presents], shall for the time being be entitled to the annual income and profits of the said [hereditaments and premises] comprised in such limitations, shall be entitled to any part or share of the said [sum raised for portions], which said sum of money is to be solely applicable for the portions of such younger children as aforesaid.

*The Trustee after the Death of A. B. shall*

40. Raise for the maintenance of any such [child or children], so much not exceeding interest on [one moiety of] the portion of such [child or children], at [four pounds] per cent. 40. By and out of the rents, issues, and profits of the said hereditaments and premises comprised in the said term of years so limited to them as aforesaid, or any part or parts thereof, levy and raise, and pay and apply, for the maintenance and education of any [child or children] for whom a portion or portions is or are hereby intended to be provided as aforesaid, in the meantime, and until his, her, or their portion or respective portions shall become payable, such yearly sum and sums of money, not exceeding in any one year [one moiety of] what the interest of the presumptive portion or portions intended to be hereby provided for such [child or children] respectively, under the trusts hereinbefore declared in his, her, or their favour, would amount to, after the rate of [four pounds] per cent. per annum,

*As A. B. shall appoint (see Nos. 6 to 10,) or as the Trustees shall think fit.*

41. Free from deductions, and to be raised and applied at the discretion of the trustees. 41. The said sum or sums of money for maintenance to be free and clear of and from all deductions for taxes or otherwise, and to be raised and paid in such manner and at such times as to them or him the said last-mentioned trustees or trustee for the time being shall for that purpose seem meet.



*The Trustees may, by the Direction of A. B. (see Nos. 9 and 10), or at their Discretion.*

42. Raise by the means aforesaid, for the advancement of any such [child or children] any sum not exceeding [one moiety of] the share of such [child].

43. If [A. B.] shall in [his] life advance any money to any such [child or children] the same shall be in satisfaction of their portions, and be repaid to [him], unless [he] directs otherwise.

42. Levy and raise, by the ways and means aforesaid, or any of them, and pay and apply, for the advancement or preferment in the world, or otherwise for the benefit of any [child or children] for whom a portion or portions is or are hereby intended to be provided, any sum or sums of money, not exceeding in the whole for each such [child] the amount or value of [one moiety of] the then presumptive or then vested portion of such [child], which sum or sums of money shall be taken in satisfaction of so much of the portion or portions hereby intended to be provided for such [child or children] respectively as shall be so advanced.

43. If the said [A. B.] shall in [his] lifetime give and advance to or with any [child or children] for whom a portion or portions is or are intended to be hereby provided as aforesaid any sum or sums of money for or towards his, her, or their preferment or advancement in the world, then and in such case, unless [he] direct the contrary, if such advanced sum or sums of money shall be less than such portion or portions, the same shall be considered as part only of such portion or portions, and such sum or sums of money only shall be raised for the portion or portions of the [child or children] to or with whom such sum or sums of money shall be so given or advanced as aforesaid as, together with the sum or sums of money so to be given or advanced, will amount to or complete the sum or sums of money intended to be hereby provided for such [child or children] respectively; but if such advanced sum or sums of money shall be equal to or more than the portion or portions intended to be hereby provided for such [child or children] respectively as aforesaid, the same shall be taken to be in full satisfaction of the whole of such portion or portions; and then and in such case the said [A. B.], [his] executors and administrators, shall be entitled to have raised for [him] or them such sum or sums of money as shall be equal to the sum or sums of money so to be advanced by [him] as aforesaid; yet so that the sum or sums of money so to be raised do not exceed the value of the then vested or then presumptive portion or portions of any [child or children] to or with whom such sum or sums of money may be so given or advanced as aforesaid, and the same shall be considered as part of the personal estate of the said [A. B.], unless [he] shall by any writing signed by [him] give any other direction respecting the sum or sums so to be advanced by [him].

## NOTES ON LORD BROUGHAM'S SHORT FORM BILL.

THIS new bill of Lord Brougham has no doubt attracted the attention of our readers. We stated all the clauses fully in our last number, and give in the present a considerable part of the schedule of forms.

It will have been observed that by the second section (see p. 50, *ante*) the remuneration for deeds, wills, or other instruments under the act, is not to be estimated by length only, but also by the skill and labour employed and responsibility incurred.

Then the third section provides that unnecessary expense, occasioned by not using the forms given in the act, may be disallowed.

The fourth clause enables the Lord

Chancellor, with the advice and assistance of the Master of the Rolls, to make orders and provisions from time to time respecting the mode of professional remuneration for any deed, will, or instrument made in pursuance of the act or referring thereto.

We suggested a clause to this effect in our remarks on the 25th of April, and are glad to see that our recommendation has been either anticipated or adopted. Still we think the measure is unnecessary and inexpedient. It will effect little good, and may do much harm. Doubt and difficulty will inevitably follow it for years to come.

It is proper to observe that the seventh section extends the provisions of this bill to all deeds under the conveyance and leases acts of last session, 8 & 9 Vict., cc. 119, 124.

# ANALYTICAL DIGEST OF CASES

REPORTED IN ALL THE COURTS,

From 1st February, 1846.

## House of Lords.

### ANNUITIES.

**Will.—Personalty.—Perpetuities.—Life estate.**—A will disposing only of personalty contained these words:—"My will is, that whatever I die possessed of, or in any way entitled to, together with whatever property my wife may be any way entitled to, shall produce to my wife an annuity of 100*l.* per annum, to each of my daughters 100*l.* per annum for themselves and their children, and to my wife's mother an addition to any property she may possess, so as to make up to her during her life an annuity of 100*l.* per annum, said annuities, after the decease of my wife and her mother, to be equally divided among my three children, William, Mary, and Julia Louisa; all the rest and residue of my property and possessions I give and bequeath to my son William." At the date of the will and of the testator's death, his daughters had no children.

**Held**, that all the annuities thus created were perpetual annuities. The testator's daughter *M.* died, and after her death he made a codicil to his will, dividing her annuity between his two surviving children, but in other respects confirming his will. His wife's mother having died, he made a second codicil in these words:—"And in case my son William shall die without leaving issue, male, lawfully begotten, my will is, that after the decease of my wife and my daughter, *J. L.*, my remaining property shall then be divided between" two relations named in the codicil, and their children.

**Held**, that these codicils did not alter the nature of the annuities given by the will to Julia Louisa. Where a will clearly established a perpetual annuity, the estate in the annuity cannot be restricted by a codicil, to a life estate, unless the expressions there used are clear and undoubted.

**Seemle**, that the rule in *Wild's case*, (6 Rep. 17), that "if *A.* devises his lands to *B.*, and to his children or issues, and he hath not any issue, at the time of the devise, the same is an estate tail," is applicable to personalty. *Stokes v. Heron*, 12 C. & F. 161. See 8 Ir. Eq. Rep. 163; 4 ib. 284; 1 Connor & Lawson, 270; 2 Drury & War. 89, 101.

Cases cited in the judgment: *Blewit v. Roberts*, 10 Sim. 491; 1 Cr. & Pl. 274; *Knight v. Ellis*, 2 Bro. Ch. Cas. 510, 570; *Buffer v. Bradford*, 2 Atk. 220; *Philipps v. Chamberlaine*, 4 Ves. 51; *Oates v. Jackson*, 2 Str. 1172; *Sonday's case*, 9 Rep. 127; *Ex parte Williams*, 1 Jac. & W. 89; *Royale v. Hamilton*, 4 Ves. 437; *Crone v. Odell*, 1 B. & B. 449; 3 Dow. 61; *Doe d. Gigg v. Bradley*, 16 East, 399; *Wilde's case*, 6 Rep. 17; *Bendloe case*, 124, p. 30.

See notes on this case, 31 L. O. 329.

### ASSIGNMENT.

See *Wife's separate estate*.

### BARONY BY CREATION.

See *Evidence*.

### EVIDENCE.

**Barony.—Creation.—Outlawry.**—It appeared by the parliamentary powers of 36 H. 8, and 1 Edw. 6, that a writ had been directed to "Thomas Lord Wharton" for each of these parliaments; but there was no evidence of his sitting in either of them or of the writ itself. The journals of the House of Lords showed, that he was summoned to, and sat in the parliament of the 2 Edw. 6, and subsequent parliaments. Creation of baronies by patent was not then unusual; but no patent or record or other trace of a patent, creating the barony of Wharton could be found: **Held**, that the said barony was created by writ in the 2 Edw. 6, and was descendible to heirs general (of the body).

A decretal order in Chancery, reciting the substance of the bill and answer, is admissible, on proof of pedigree, to established the identity of parties to the suit.

But an answer alone, though sworn but not filed, is not admissible.

Scotch wills, registered in the Court of Sessions, are retained there, and if it is necessary to prove any such wills in England, a certified copy is given out, and is admitted to probate in the English and Ecclesiastical Courts. The Lords' committees for privileges will not, on claims of peerage, receive such copy, unless it is shown that the original will cannot be produced.

If a judgment of outlawry stand in the way of a claim to a barony in abeyance, although it is clearly erroneous, the committee of privileges cannot overlook it or reverse it; but the claimant must apply to the proper tribunal for its reversal, and produce the judgment of reversal to the committee. *The Wharton Peerage*, 12 C. & F. 295.

Cases cited in the judgment: *Netterville Peerage*, 2 Dow. & C. 342; *Fitzwalter Peerage*, 10 C. & F. 952; *Anon. Styles*, 297; *Case of Outlawry*, Co. Litt. Rep. 150; *Anon. March*, Rep. 20; *Rex v. Wilkes*, 4 Burr. 2527; *Barrington v. Rex*, 3 Term. R. 449; *Reg. v. Yandell*, 4 T. R. 521; *Belly v. Algor*, *Dyer*, 206, a.

And see *Inclosure*, 3.

### FIXTURES.

**Personal and real estate.**—The absolute owner of land, for the purpose of better using that land, erected upon and affixed to the freehold certain machinery: **Held**, that in the absence of any disposition by him of his machinery, it would go to the heir as part of the real estate.

If the corpus of such machinery belongs to the heir, all that belongs to that machinery, although more or less capable of being detached from it, and more or less capable of being used in such detached state, must also be considered as belonging to the heir.

No distinction arises in the application of this rule, from the circumstance that the land did not descend to, but was purchased by the owner. *Fisher v. Dixon*, 12 C. & F. 312.

Cases cited in the judgment: *Lawton v. Lawton*, 3 Atk. 13; *Lord Dudley v. Lord Ward*, Amb. 113; *Lawton v. Salmon*, 1 H. Bl. 259, n.; *Grimes v. Bower*, 6 Bing. 437; *Elwes v. Mawe*, 3 East, 38, 53; *Trappe v. Harter*, 2 Cr. & M. 150, 3 Tyr. 603.

#### INCLOSURE AND EXCHANGE OF LANDS.

1. *Principal and agent.*—*Jurisdiction.*—*Evidence.*—The 6 & 7 W. 4, c. 115, (extended by the 3 & 4 Vict. c. 31), authorises exchanges of lands on conditions therein prescribed. One of these is the written consent of the owners of the lands intended to be exchanged. The landowners of a parish determined to carry this act into execution, and appointed a commissioner for that purpose. B., one of the landowners, authorised his agent to attend for him at the meeting held for the purpose of carrying the act into execution, but desired him not to exchange a particular wood except for woodland. N.'s lands were to be exchanged against those of B., and this restriction was communicated to N.'s agent, who being asked to exchange another wood against the wood in question, said, that his principal had no power to do so. This answer was communicated to B., who took no further notice of the matter. The restriction on the authority of B.'s agent did not appear to have been brought to the knowledge of the commissioner. The commissioner prepared and B. signed a written consent to ratify the exchange of certain closes belonging to him, and designated in the consent by numbers. Among the closes thus designated was the wood in question, but the number by which it was referred to in the consent, and in a map and plan previously submitted to B.'s inspection, was not the same as that which it bore in B.'s private map of his own estate. A comparison of the two maps, or the reading of the plan sent with the commissioner's map, would have shown B. that the wood in question was included in his consent. The commissioner allotted the lands to be exchanged, and among them, included this wood, but did not give woodland for it. Possession of the exchanged lands, and of this wood (although the award of the commissioners had not been formally executed,) was delivered by B.'s agent to N., who immediately began to exercise acts of ownership over it. B., sometime afterwards, discovered what had been done, and brought ejectment against N. for the wood. N. filed his bill in Chancery to refrain B. from proceeding with the action, and to compel him to perfect the exchange; and B. filed his bill to prevent the commissioner from executing the award, alleging that the consent given to him had been signed in mistake.

*Held*, N. was intitled to an injunction as prayed by his bill, and that B. had no equity on which to ask for the interference of the court in his favour.

2. The stat 6 & 7 W. 4, c. 115, gives to persons dissatisfied with anything that has been done under its provisions, an appeal to the quarter sessions. This would not deprive a party aggrieved of his right to apply for the

interference of a court of equity, if he was in other respects entitled to that interference.

3. The house may, in its discretion, allow a document to be referred to in argument, although it has not been printed in the papers laid before the House, according to the directions of the standing order, No. 181, (Feb. 24, 1813.) *D. of Beaufort v. Neeld*, 12 C. & F. 248. See *Doe d. D. of Beaufort v. Neeld*, 3 M. & G. 271, 294, n.; 3 Scott, N. R. 618, and 10 Law Jour. (N.S.) C. P. 267.

Cases cited in the judgment: *Martyn v. Kingsley*, Prec. in Ch. 209; *Roberts v. Matthews*, 1 Vern. 150, n.; *Hamilton v. Lord Clanricarde*, 1 Bro. P. C. 341; *Whitehead v. Tuckett*, 15 East, 400; *Mansford v. Jacob*, 1843, not reported.

#### JURISDICTION IN EQUITY.

See *Inclosure*.

#### LIFE ESTATE.

See *Annuities*.

#### OUTLAWRY.

See *Evidence*.

#### PARTNERSHIP.

*Stat.* 39 & 40 G. 3, c. 99, *Pawnbroker.*—Two persons entered into an agreement to be partners in the business of pawnbrokers, to be carried on under the firm of one of them; and in pursuance of the articles of agreement, that one's name alone was painted over the door of the business premises; the licence also was taken out, and the tickets to the customers were issued in his sole name, while the other partner (carrying on another business) attended occasionally to inspect the books of the firm, and drew a certain per centage on his share of the capital out of the profits: *Held*, that the agreement constituted a secret partnership, and was therefore illegal and void, as being in contravention of the policy and enactments of the stat. 39 & 40 G. 3, c. 99. *Gordon v. Howden*, 12 C. & F. 237. And see 5 Bell, M., D. & Y. 698.

Cases cited in the judgment: *Warner v. Armstrong*, 3 Myl. & K. 45; *Armstrong v. Lewis*, 2 Cramp. & M. 284, et seq.; *Armstrong v. Armstrong*, 3 Myl. & K. 53, et seq.; *Lewis v. Armstrong*, 2 Cramp. & M. 297.

See notes on this case, 31 L. O. 376.

#### PAWNBROKER.

See *Partnership*.

#### PERPETUITIES.

See *Annuities*.

#### PERSONALTY.

See *Annuities*; *Fixtures*.

#### PRINCIPAL AND AGENT.

See *Inclosure and exchange of lands*.

#### WIFE'S SEPARATE ESTATE.

*Alimentary Debts.*—*Assignment.*—A testator in Scotland gave all his property to trustees; first, to pay his debts; secondly, to pay Mrs. R., (a married woman,) so much of the annual proceeds as they might deem necessary for the support of her and her family during her life, declaring the same to be alimentary and exclu-

sive of her husband, and not to be attachable nor assignable, nor subject to any debts or debts of her or of her husband. The acting trustee, with consent of Mrs. R., assigned to her alimentary creditor the rents of the trust property; first, to pay debts affecting it: secondly, to pay part of the rents to Mrs. R. for aliment; thirdly, to apply the residue in payment of the debts due to the assignee: *Held*, that the assignment was void on three grounds, viz.—1st, It was not competent to the trustee to substitute another person for himself in the trust, which was the effect of the assignment; 2ndly, The rule of law in Scotland requiring the concurrence of the husband in his wife's deed, could not be dispensed with by his absence abroad at the time for a temporary purpose only; 3rdly The assignment was void, as it violated the express prohibition against alienation: and in this respect the law in Scotland is the same as in England. *Rennie v. Ritchie*, 12 C. & F. 204.

Cases cited in the judgment: *Heriot's Trustees v. Fyffe*, in 1836; 12 Jurist (Scot's), 28; *Tullett v. Armstrong*, 1 Beav. 1; and 4 Myl. & Cr. 377, 390; *Earl of Buchan v. His Creditors*, 13 Sh. D. E. & M. 1112.

## WILL.

See *Annuities*.

## Criminal Law.

## ADMIRALTY JURISDICTION.

*Indictment for an offence committed on the high seas. What it need not aver.*—An indictment under stat. 7 Vict., c. 2, (for the more speedy trial of offences committed on the high seas,) need not contain an averment that the offence was committed "within the jurisdiction of the admiralty." *Reg. v. Jones*, 1 Den. C. C. 101. See *Chaney v. Payne*, 1 Q. B. 722.

## BASTARD.

See *Indictment*, 5.

## BILL OF EXCHANGE.

See *Forgery*, 1.

## CONSPIRACY.

*What not a case for the consideration of the judges.*—Indictment for a conspiracy to cause certain persons to be elected councillors of the borough of *Bolton*, in *Lancashire*, by fraud, viz., by procuring certain other persons who were not burgesses of the said borough, and whose names were not in the burgess lists, to personate voters for the said borough, and to vote for the election of the persons first above mentioned: *Held*, not to be a subject of consideration for the judges. *Reg. v. Haslam*, 1 Den. C. C. 73.

## DYING DECLARATIONS.

Statements by the deceased held admissible as dying declarations. *Reg. v. Howell*, 1 Den. C. C. 1.

## DESTRUCTIVE MATTER.

"Boiling water" is "destructive matter"

within the stat. 1 Vict., c. 85, s. 5. *Reg. v. Crawford*, 1 Den. C. C. 100.

## EVIDENCE.

See *Dying declarations*; *Forgery*; *Threatening*, 2.

## FORGERY.

1. *Indorsement on a bill of exchange.*—A bill of exchange made payable to A., B., C., D., or order, executrixes. The indictment charged that the prisoner forged on the back of the said bill a certain forged indorsement, which said forged indorsement was as follows: (naming one of the executrixes) *Held*, a forged indorsement within the stat. 1 Geo. 4, c. 66, s. 3. *Reg. v. Winterbottom*, 1 Den. C. C. 41.

Case referred to in the judgment: *Bolland's case*, 1 Leach, C. C. 97.

2. *What acts amount to an uttering of a forged receipt.*—Indictment under stat. 11 Geo. 4 & 1 W. 4, c. 66, s. 10, for uttering a forged receipt. The prisoner produced the receipt to the witness, and exhibited it to him to look at, but would not part with it out of his own hands: *Held*, that this amounted to an uttering. *Reg. v. Radford*, 1 Den. C. C. 59.

3. *Forging an order for the payment of money. Intent how laid. Evidence.*—Prisoner indicted for forging an "order for the payment of money," with intent (in the first count) to defraud "H. D., as one of the public officers of the Y. District Bank," (in the second) to defraud "H. D. and others." The instrument was as follows:

"Thornton-le-moor, July 20, 1844. Mr. Johnson, Sir,—Please to pay to James Jackson the sum of 13*l.*, by order of Christopher Sadler, Thornton-le-moor, brewer, the District Bank. I shall see you on Monday. Yours obliged, Charles Sadler."

*Held*, 1st. To be an order within stat. 11 Geo. 4 and 1 W. 4, c. 66, s. 3.

2nd. Whether the intent might be laid as in the second count, *quære*.

3rd. The certified copy of the return forwarded to the Stamp Office, under statute 7 Geo. 4, c. 46, s. 4, in which it was stated that H. D. was one of the public officers of the Y. District Bank, is not made exclusive evidence of that fact. *Reg. v. Carter*, 1 Den. C. C. 65.

Cases cited in the judgment: *Clinch's case*, 2 East, Pl. C. 983; *Lockett's case*, 1 Leach, 110; *Steward v. Greaves*, 10 M. & W. 711; *Edwards v. Buchanan*, 3 B. & Ad. 788.

4. *What is a forged warrant.*—The following forged document held to be properly described in the indictment as a warrant. "To *Molmeur and Co.*—Pay to my order, two months after date, to Mr. John Smith, the sum of 80*l.*, and deduct the same out of my account." There was no signature. Across the document was written, "Accepted, Luke Lade." It was indorsed, "John Smith, farmer, *Hailsham, Sussex.*" *Reg. v. Smith*, 1 Den. C. C. 79.

And see *Larceny*.

## INDICTMENT.

1. *Date of felony. How laid when stroke at one time and place, and death at another ; a killing with a stick or a stone substantially the same mode of killing.*—Second count of indictment charged *J. O'B.*, that he on 27th of May, feloniously and of his malice aforethought, struck deceased with a stick, of which said mortal blow deceased died on the 29th May : that *T. R., D. D., &c.* on the day and year first aforesaid, at the parish aforesaid, feloniously and of their malice aforethought, were present aiding and abetting the said *J. O'B.*, the felony last aforesaid, to do and commit ; and the jurors, &c. say, that the said *J. O'B., T. R., D. D., &c.* him the deceased in manner and form last aforesaid, feloniously and of their malice aforethought, did kill and murder.

Third count charged *T. R.*, that he on 27th May, a certain stone feloniously and of his malice aforethought, cast and threw, and with the said stone so cast and thrown struck deceased, of which said mortal blow deceased died on the 29th May : that *J. O'B., D. D., &c.* (same as above.)

Objection : 1st, That the indictment was inconsistent in charging the principals in the second degree, with committing the felony at the time of the stroke, whereas it was no felony till the time of the death. 2ndly, That the general verdict of guilty, left it uncertain which was the cause of the death, the stick or the stone ; and that therefore no judgment could be entered on either.

*Held* : 1st, The form of the indictment good. 2ndly, the alleged generality of the verdict immaterial, the mode of death being substantially the same. *Reg. v. O'Brian*, 1 Den. C. C. 9.

Cases referred to in the judgment : *Warneford's case*, 1 Dyer, 50, b. n. ; *Wingfield's case*, *Croke*, Eliz. 739 ; *Hargrave's case*, 5 C. & P. 170 ; *Tilley v. Wye*, *Cro. Eliz.* 176 ; *MacKally's case*, 9 Coke, Rep. 67, a. ; *Rex v. Waters*, 7 C. & P. 250.

2. *Destroying, defacing, and injuring a register of baptisms.*—Objection of uncertainty. —Indictment under 11 Geo. 4 and 1 W. 4, s. 66, s. 20, for destroying, defacing, and injuring a register of baptisms, marriages, and burials. Objection, 1. That there was neither a destroying, defacing, or injuring within the statute, because the register when produced had the torn piece pasted in, and was as legible as before. 2. That the indictment was bad for uncertainty, for alleging three distinct and different offences. 3. For not containing an express averment of a *scienter*. Indictment held good on all points. *Reg. v. Bowen*, 1 Den. C. C. 22.

3. *When two counts transposable.*—*A.* and *B.* indicted for the murder of *C.* by shooting him with a gun. In first count, *A.* was charged as principal in first degree, *B.* as present, aiding and abetting him. In second count, *B.* as principal in first degree, *A.* as aiding and abetting. The jury convicted both, but said that they were not satisfied as to which fired the gun : *Held*, 1. That the jury were not

bound to find the prisoners guilty of one or other of the counts only. 2. (*Maule, J.*, dissentiente) that notwithstanding the word "afterwards" in the second count, both the counts related substantially to the same person killed, and to one killing, and might have been transposed without any alteration of time or meaning. *Reg. v. Downing*, 1 Den. C. C. 52.

Cases cited in the judgment : *R. v. Towle* and others, *R. & R. Cr. C.* 314 ; *R. v. Tyler*, 8 C. & P. 616 ; *Reg. v. O'Connell*, 11 Clarke & F. 375.

4. *In one count, stealing a cheque ; in another, a piece of paper, value one penny.*—Prisoner charged in one count of the indictment with stealing a cheque for 13l. 9s. 7d. ; in another count, for stealing a piece of paper, value one penny. *Held*, that, supposing the cheque to have been a void cheque, (as being contrary to the provisions of stat. 55 Geo. 3, c. 191,) it would still sustain the charge laid in the second count. *Reg. v. Perry*, 1 Den. C. C. 69.

Cases cited in the judgment : *R. v. Clark R. & R. Cr. C.* 181 ; *R. v. Mead*, 1 C. & P. 535 ; *R. v. Vyse*, *M. Cr. C.* 218.

5. *Bastard child. Under what circumstances no presumption of name.*—Indictment stated that the prisoner, a single woman, on the 27th of August, 1844, brought forth a male child alive ; that she afterwards, to wit, on the day and year aforesaid, killed the said child. Objection, that the judgment ought to have either stated the name of the child, or that the name was unknown to the jurors ; overruled by *Coleridge, J.*, at the trial, on the ground that there was no presumption, from the mere fact of birth, that the child had a name, it being a bastard ; that the indictment afforded no presumption of its having acquired a name by reputation or baptism ; that an averment that the name was unknown implied the acquisition of some name. Conviction held right. *Reg. v. Willis*, 1 Den. C. C. 80. See *R. v. Biss*, 2 Moo. Cr. C. 93.

6. *Sheep and lambs. Proof of latter will support an indictment for stealing former.* Prisoner indicted under stat. 7 & 8 G. 4, c. 29, s. 25, for stealing "sheep." The jury found that the animal so described was a "lamb." Indictment held good. *Reg. v. Spicer*, 1 Den. C. C. 82 ; overruling *R. v. Loorus*, 1 Moo. Cr. C. 160 ; and *R. v. Puddifoot*, 1 ib. 247.

See *Admiralty Jurisdiction ; Forgery*, 2 ; *Poaching*.

## JURISDICTION.

See *Admiralty Jurisdiction ; Conspiracy ; Slave Trade*.

## LARCENY.

*Obtaining goods by forged order not a larceny.*—*A.* went to *B.'s* shop, and said he had come from *C.* for some hams, &c., and at the same time produced a note in the following terms : "Have the goodness to give the bearer ten good thick sides of bacon, and four good showy hams at the lowest price. I shall be in town on Thursday next, and will call and pay

you. Yours, &c., C." B. thereupon delivered the hama to A. The note was forged, and A. had no such authority from C.: *Held*, A. was not guilty of larceny. *Reg. v. Adams*, 1 Den. C. C. 38.

## MURDER.

See *Slave Trade*.

## PIRACY.

See *Slave Trade*.

## POACHING.

*Constructive arming sufficient*.—Indictment under stat. 2 Geo. 4, c. 69, s. 9, (against night poaching), charged A. B. and six others, "that they being respectively armed with guns, and other offensive weapons, entered, &c." A. and B. were each proved to be armed with a gun, the other six with bludgeons. Objections: that the averments, "other offensive weapons," (not specifying what,) made the arming of the other six only constructive, which was not sufficient to bring them within the statute. Indictment held good. *Reg. v. Goodfellow*, 1 Den. C. C. 81; overruling *R. v. Davis*, 8 C. & P. 759.

## POISON.

*What not an attempt to administer poison*.—An attempt by A. to administer poison to B., through the agency of C., under such circumstances that C. would have been the sole principal felon, (had the poison been administered,) and A. an accessory before the fact, is not such an attempt as renders A. liable to be indicted under the stat. 7 W. 4 and 1 Vict., c. 85, s. 3. *Reg. v. Williams*, 1 Den. C. C. 39.

## SLAVE TRADE.

*Illegal seizure of a Brazilian vessel. Piracy. Murder. Jurisdiction of British courts of law*.—On the 26th of February, 1845, the *Felicidade*, a Brazilian schooner, fitted up as a slaver, surrendered to the armed boats of H.M.S. *Wasp*. She had no slaves on board. The captain and all his crew, except *Majavel* and three others, were taken out of her and put on board the *Wasp*. On the 27th of Feb. the three others were taken out and put on board the *Wasp*, also *Cerqueira*, the captain, was sent back to the *Felicidade*, which was then manned with sixteen British seamen, and placed under the command of Lieut. *Stupart*. The lieutenant was directed to steer in pursuit of a vessel seen from the *Wasp*, which eventually turned out to be the *Echo*, a Brazilian brigantine, having slaves on board, and commanded by *Serva*, one of the prisoners. After a chase of two days and nights, the *Echo* surrendered, and was then taken possession of by Mr. *Palmer*, a Midshipman, who went on board her, and sent *Serva* and eleven of the crew of the *Echo* to the *Felicidade*. The next morning Lieut. *Stupart* took command of the *Echo*, and placed Mr. *Palmer* and nine British seamen on board the *Felicidade* in charge of her and of the prisoners charged in the indictment.

The prisoners shortly after rose on Mr.

*Palmer* and his crew, killed them all, and ran away with the vessel. She was recaptured by a British vessel, and the prisoners brought to this country to take their trial for murder. The jury found them guilty.

On a case reserved for the opinion of the judges, several points were taken by the counsel for the prisoners: the conviction was held wrong. *Reg. v. Serva*, 1 Den. C. C. 104.

## THREATENING.

1. *What is a sending of a threatening letter*.—Indictment for sending a threatening letter under statute 4 G. 4, c. 54, s. 3. First count charged G. with sending to R., and threatening to burn R.'s houses. It was proved that R. had only a reverent interest in the said houses. *Quære*, whether G. could be convicted on that count?

Second count, charged G. with sending to R. and threatening to burn the said houses, laying them as the property of B., the tenant. It was proved that G. dropped the letter in a public road near R.'s house, that A. found it and gave it to H., who opened it, read it, and gave it to E., who showed it both to B. and R.: *Held*, that this was a sending within the statute. *Reg. v. Grimwade*, 1 Den. C. C. 30.

2. *Extorting money. Evidence*.—Prisoner was indicted under statute 7 & 8 Geo. 4, c. 29, s. 8, (in first count), for feloniously accusing A. B. of a certain infamous crime, with a view to extort and gain money from him. (Second count) charging the same offence somewhat differently: *Held*, by seven of the judges to five, that the evidence was not sufficient to prove the intent laid. *Reg. v. Middleditch*, 1 Den. C. C. 92.

## UTTERING.

See *Forgery*, 2.

## WARRANT.

*Order for the payment of money*.—The following forged instrument held, under the circumstances, to be a warrant or order for the payment of money. "Mr. Martin will be pleased to send by the bearer 10*l.* on Mr. Hodge's account, as Mr. Hodge is very bad in bed, and cannot come himself, (signed) Martin Ralph, foreman, St. Austell Foundry." *Reg. v. Vivian*, jun. 1 Den. C. C. 35.

See *Forgery*, 3.

## WITNESS.

*Admissible at common law after conviction and before judgment*.—A. and B. indicted for stealing, C. for receiving. B. pleaded guilty, and was tendered as a witness against A. and C. He was objected to by the counsel for the prisoner as inadmissible: *Held*, an admissible witness in common law. *Reg. v. Hinks*, 1 Den. C. C. 84.

## WOUNDING.

*Feloniously wounding a mare. Malice*.—Prisoner was convicted under statute 7 & 8 G. 4, c. 30, s. 16, of "unlawfully, maliciously, and feloniously wounding a mare." Conviction held right. *Quære*, whether on the ground, that by s. 25 of the above statute, proof of

general malice is still sufficient to constitute the offence, notwithstanding statute 1 Vict. c. 90, ss. 1, 2, 3; or that, it not appearing against whom or what the malice was conceived, malice against the owner or supposed owner would be presumed. (See 2 East, Pl. C. 1074.) *Reg. v. Tivy*, 1 Den. C. C. 63.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Vice-Chancellor of England.

NEW ORDERS, 111 & 16, s. 44.—ENLARGING PUBLICATION.

THIS was a motion to enlarge publication. It appeared that the interrogatories were filed on the 7th of March, and the solicitor had taken out a warrant for a similar application to the Master, on the 10th of March, two days before publication would pass under the new orders, but the application could not be heard till the 13th, when the objection was taken that it was too late.

*Mr. Campbell* for the motion.

*Mr. Bethell*, contra, contended that no satisfactory account had been given why no effort had been made to examine witnesses earlier.

The *Vice-Chancellor* said he did not conceive it to be necessary for a solicitor to go to the examiner's office the very first day upon which he could examine witnesses. It was sufficient if there was a *bond fide* intention of having the interrogatories acted upon. He thought the solicitor, having made application upon the 7th, and having been prevented by an accident from getting publication enlarged by the Master, ought to get it from the court. A month's further time given.

*Groom v. Stinton*. March 25, 1846.

### MOTION TO DISMISS.—COSTS.

THIS was a motion to dismiss for want of prosecution in a case where the plaintiff was dead; but where an order had been made in December last that he should file a replication. It was admitted that the only order which could now be made was that the bill should be dismissed if not revived within a certain time. But it was contended that under the circumstance of the existence of the previous order, defendant ought to have his costs.

*Mr. Stewart* for the motion.

*Mr. Bethell*, contra.

The *Vice-Chancellor* refused to give costs.

*Bull v. Roberts*. March 25, 1846.

### Queen's Bench.

(Before the Four Judges.)

### RAILWAY.—PROVISIONAL DIRECTOR.

The attorney to a projected railway company held himself out as responsible for all charges and expenses incurred before the

deposits were paid, and in order to induce persons to put down their names on the provisional committee, he gave to several a guarantee to bear them harmless against such expenses. The scheme was afterwards abandoned. In an action by the attorney for money paid against a provisional director, to whom he had not given a guarantee, a verdict was found for the defendant, and this court refused a rule for a new trial, on the ground that the plaintiff had held himself responsible for these expenses, and must take the consequences.

THIS was an action of assumpsit for money paid, and on an account stated, tried before *Mr. Justice Coleridge*, at the sittings during Easter Term, in which a verdict was found for the defendant. The plaintiff was the attorney to a projected railway company, called the London Union Railway Company, and the defendant was a member of the provisional committee. The scheme was projected in October last, and was abandoned towards the end of November, and the action was brought for disbursements alleged to have been made by the plaintiff for and on behalf of the company during that period. It appeared that the plaintiff was one of the principal promoters of the scheme, and had given a guarantee to several of the provisional directors to the effect that in consideration that they would consent to have their names put down as directors, he would bear them harmless against all charges and expenses till the payment of the deposits. No guarantee had been given by the plaintiff to the defendant; but it appeared in evidence that the directors had treated the plaintiff as the paymaster, and that he held himself responsible for all the expenses incurred till the deposits were paid.

*Mr. Serjeant Stee* moved for a rule to show cause why there should not be a new trial, on the ground that the verdict was against evidence. The plaintiff was acting as the agent for and on behalf of the provisional directors, and the position of the defendant is different from that of several of the other directors to whom the plaintiff had given a guarantee. There is nothing, therefore, in the circumstances of the case to exempt the defendant from the liability which ordinarily attaches on a provisional director.

*Lord Denman*, C. J. I do not think that any rule ought to be granted in this case. The evidence is that the plaintiff held himself out as responsible for these expenses, and the fact that no guarantee was given to the defendant does not show that the work was done for the defendant.

*Mr. Justice Patterson*. This is a question to whom credit was given; and if the plaintiff holds himself out as responsible for these expenses, he must take the consequences. I do not see any reason to disturb the verdict.

*Williams and Coleridge*, J's concurred.

Rule refused.

*Lloyd v. Harrison*. Q. B. Easter Term, 1846.

**Queen's Bench Practice Court.**

**DISTRINGAS TO OUTLAWRY.—SERVICE OF WRIT OF SUMMONS.**

*In order to obtain a distringas to proceed to outlawry, if there be a house or place where a copy of the writ of summons can be left with any reasonable prospect of its reaching the defendant, such copy must be left there; and if there be any good reason for not leaving it, explanation of the circumstance must appear upon the affidavit. If a person answering to the description of trustee or professional adviser of the defendant can be found, a copy of the writ should be left with him, though he does not reside in the county into which the writ of summons was issued.*

On the 2nd of May, *Wordsworth* applied for a distringas for the purpose of proceeding to outlawry. *Coleridge, J.*, granted the application; but, in consequence of its not appearing upon the affidavits in support of the application that a copy of the writ of summons had been left at any of the places therein mentioned, the officers refused to draw up the rule.

The affidavits stated that an attempt was made to find the defendant at his last known place of residence, 5, Egremont Place, Brighton, but that the house was shut up and unoccupied, and that reference was made by a bill in the window to a house agent; that application was made to such agent, who stated that the defendant had kept possession of the house until the last few days, but that he was now in Paris, that eighteen months' arrears of rent were due from him, and that he (the agent) believed that the defendant was out of the way to avoid his creditors. The affidavits further stated that application had been made to the defendant's trustee and professional adviser (an attorney) in London, but that he had received no instructions to appear to the action.

In consequence of what had taken place in the rule office, *Wordsworth* applied to the masters of the Exchequer to ascertain their practice upon the subject, and received the following answer:—

"The attention of the officers does not seem to have been directed to this question; but we think that if there is a house or place where a copy of the writ could be left with any reasonable prospect of its reaching the defendant, that ought to be done; and if the house be shut up, or there be any other good reason for not leaving a copy of the writ, explanation of that should appear on the affidavits."

"E. B." (*Edward Bennett*.)

*Wordsworth* now (May 8th) again applied to the court, submitting that in the present instance it did appear that there was no house or place in Sussex (into which the writ of summons was issued) where a copy of the writ could have been left with any prospect of its reaching the defendant, and that it could not be necessary to leave it with the attorney as he did not reside in the county of Sussex.

*Wightman, J.* The last day of term is not a convenient one for discussing a question which is to settle the practice. Master *Bunce*, however, reports to me that where there is such a person as an attorney or trustee of the defendant to be found, a copy of the summons should be left with him. Under particular circumstances, such service may be dispensed with, but none such appear in the present case.

Rule refused.

*Vernon v. Pouncett.* Easter Term, 1846.

**CHANCERY SITTINGS.**

Trinity Term, 1846.

**Lord Chancellor.**

AT WESTMINSTER.

Friday . . .	May 22	Appeal Motions.
Saturday . . .	23	Petition-day.
Monday . . .	25	} Appeals.
Tuesday . . .	26	
Wednesday . . .	27	} Appeal Motions.
Thursday . . .	28	
Friday . . .	29	{ (Petition-day) Unopposed Petitions and Appeals.
Saturday . . .	30	} Appeals.
Monday . . .	June 1	
Tuesday . . .	2	} Appeal Motions.
Wednesday . . .	3	
Thursday . . .	4	} (Petition-day) Unopposed Petitions and Appeals.
Friday . . .	5	
Saturday . . .	6	} Appeals.
Monday . . .	8	
Tuesday . . .	9	} (Petition-day) Unopposed Petitions and Appeals.
Wednesday . . .	10	
Thursday . . .	11	} Appeal Motions.
Friday . . .	12	

N. B.—Such days as his Lordship is occupied in the House of Lords excepted.

See the *Rolls Sittings*, p. 63, ante.

**Vice-Chancellor of England.**

Friday . . .	May 22	Motions.
Saturday . . .	23	Petition-day.
Monday . . .	25	} Pleas, Demurrers, Exceptions, Causes, and Furs.
Tuesday . . .	26	
Wednesday . . .	27	} Diras.
Thursday . . .	28	
Friday . . .	29	{ (Petition-day) Short Causes, Petitions, and Causes.
Saturday . . .	30	} Pleas, Demurrers, Exceptions, Causes, and Furs.
Monday . . .	June 1	
Tuesday . . .	2	} Diras.
Wednesday . . .	3	
Thursday . . .	4	Motions.
Friday . . .	5	{ (Petition-day) Short Causes, Petitions, and Causes.
Saturday . . .	6	} Pleas, Demurrers, Exceptions, Causes, and Furs.
Monday . . .	8	
Tuesday . . .	9	} Diras.
Wednesday . . .	10	
Thursday . . .	11	{ (Petition-day) Short Causes, Petitions, and Causes.
Friday . . .	12	Motions.



**Vice-Chancellor Knight Bruce.**

Friday . . . May 22	Motions and Causes.
Saturday . . . 23	(Petition-day) Petitions and Causes.
Monday . . . 25	Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Tuesday . . . 26	
Wednesday . . . 27	Bankrupt Petitions & Ditto.
Thursday . . . 28	Motions and Causes.
Friday . . . 29	(Petition-day) Petitions and Causes.
Saturday . . . 30	Short Causes and Causes.
Monday . . . June 1	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 2	
Wednesday . . . 3	Bankrupt Petitions and Ditto.
Thursday . . . 4	Motions and Causes.
Friday . . . 5	(Petition-day) Petitions and Causes.
Saturday . . . 6	Short Causes and Causes.
Monday . . . 8	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 9	
Wednesday . . . 10	Bankrupt Petitions and Ditto.
Thursday . . . 11	(Petition-day) Petitions, Short Causes & Causes.
Friday . . . 12	Motions and Causes.

**Vice-Chancellor Stigman.**

Friday . . . May 22	Motions and Causes.
Saturday . . . 23	(Petition-day) Petitions and Causes.
Monday . . . 25	Pleas, Demurrers, Exceptions, Causes, and Fur. Dirs.
Tuesday . . . 26	
Wednesday . . . 27	
Thursday . . . 28	Motions and ditto.
Friday . . . 29	(Petition-day) Pleas, Demurrers, Exons., Causes, and Fur. Dirs.
Saturday . . . 30	Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . June 1	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 2	
Wednesday . . . 3	
Thursday . . . 4	Motions and Causes.
Friday . . . 5	(Petition-day) Pleas, Demurrers, Exons., Causes, and Fur. Dirs.
Saturday . . . 6	Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 8	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 9	
Wednesday . . . 10	
Thursday . . . 11	(Petition-day) Short Causes, Petitions, (unopd. first,) and Causes.
Friday . . . 12	Motions and Causes.

**CHANCERY CAUSE LIST.****Master of the Rolls.***Trinity Term, 1816.**(JUDGMENTS reserved.)***Earl Nelson v. Lord Bridport, exons.**

Hulke v. Beauclerk, cause.  
 Bainbridge v. Baddeley, dem.  
 Attorney-General v. Ironmongers Co., fur. dirs. and costs.  
 Fordyce v. Bridges, cause.  
 Lancaster v. Evors, Same v. Morley, fur. dirs. and costs.  
 Lindgren v. Lindgren, fur. dirs. and costs.

**PLEAS AND DEMURRERS.**

*Part heard*, Tristram v. Roberts, dem.  
 Ryves v. Duke of Wellington, do.  
 McClelland v. Cotesworth, do.  
 Salmon v. Anderson, do.

**CAUSES.**

*Michaelmas Term*, Walton v. Potter.  
 Do. A. J. B. Hope v. Hope.  
 Do. A. J. Hope v. Same.  
 Do. H. J. Hope v. Same.  
*Stand over until mentioned*, Richardson v. Horton, Same v. Taylor, Same v. Derby, fur. dirs. and costs.  
 Attorney-General v. Bedingfield.  
*S. O. to file suppl. bill*, Hele v. Bexley, Same v. Same, exons.  
 Campbell v. Crook, exons.  
*Part heard*, Augerand v. Parry.  
*Part heard*, Hodgkinson v. Cooper, and exons.  
 Hedges v. Harper, fur. dirs. and costs.  
 Lockhart v. Hardy, Thomas v. Hardy, Newman v. Hardy, Hardy v. Lockhart, Lockhart v. Arundell, Same v. Lee, Same v. Hardy, Same v. Crouch, fur. dirs. and costs.  
*Michaelmas Term*, Churchman v. Capon, fur. dirs. and costs.  
*S. O. after report*, Richardson v. Horton, Same v. Taylor, Same v. Derby, exons.  
 Woodcock v. Tarbuck, and two petitions.  
*1st Cause day*, Kinder v. Lord Ashburton, Same v. Pennell.  
*S. O. to file interrgs.*, Barnes v. Hastings.  
 Attorney-General v. Roose.  
*1st Cause day*, Harris v. Farwell, one point only.  
 Hargrane v. Hargrane.  
 Sanderson v. Dobson.  
*1st Cause day after term*, Attorney-General v. Evans, Same v. Davies.  
*1st Cause day*, Dowden v. Hook; Dowden v. Dowden.  
 Martin v. Sedgwick; Same v. Cole.  
 Wilson v. Sir William Eden.  
 Wilson v. John Eden.  
 Brown v. Bullpitt.  
 Stone v. Stone.  
 Madgwick v. Madgwick, fur. dirs. and costs.  
 Jackson v. Jackson, Same v. Same, Same v. Same.  
 Attorney-General v. Maclean.  
*1st Cause day*, Wedderburn v. Wedderburn, Same v. Colwill, Douglas v. Same, exons.  
 Hodgkinson v. Wyatt, exons., and fur. dirs. and costs.  
 Clark v. Chuck.  
 Bagshaw v. Parker, Same v. Same.  
 Staunton v. Scott, Same v. Power, Brown v. Staunton, fur. dirs. and costs.  
 Whitcher v. Penley, fur. dirs. and costs.  
 Meire v. Williams.  
 Best v. Davis, exons.  
 Bather v. Kearsley, Same v. Fraser.  
 Meyer v. Montrou, exons., and fur. dirs. and costs.  
 Jones v. Humphreys, fur. dirs. and costs.  
 Attorney-General v. Heron, fur. dirs. and costs.  
 De Morlaincourt v. Hales, fur. dirs. and costs.

Wood v. Pattison, Same v. Black, Same v. Davy, for. dirs. and costs.

Todd v. Wilson.  
Page v. Horne.  
Ryall v. Hannam.  
Smurfit v. Rigge.  
Short, Woolard v. Hill.  
Attorney-General v. Bedingfield, Hammond's Charity.  
Attorney-General v. Bedingfield, Yerker's Charity.  
Pennell v. Cliffe.  
Hodges v. Harper, Same v. Same,  
Carr v. Hudson, exons.  
Bate v. Governor and Company of the Bank of England.  
Dashwood v. Coffin.  
Coffin v. Coffin.

## COMMON LAW CAUSE LISTS.

## Queen's Bench.

## NEW TRIALS.

Remaining undetermined at the end of the Sitings after Easter Term, 1846.

*Hilary Term, 1845.*

*London.*—Lowe v. Penn, pt. hd.

*Easter Term, 1845.*

*Chester.*—The Queen v. Archbishop of York.  
*Devon.*—Barratt v. Oliver; Doe several dems. of Molesworth, Bt. and others v. Sleeman and another, part heard.

*Somerset.*—Lambert v. Lyddon.

*Northumberland.*—Bolam v. Shaw.

*Durham.*—Ray v. Thompson; The Queen v. Great North of England Railway Co.; Hansell v. Hutton, Esq.

*York.*—Doe d. Lord Downe v. Thompson; Lord Viscount Downe v. Thompson; Phillips v. Broadley; Petch and wife v. Lyon; James v. Brook.

*Lincoln.*—Saffery v. Wray, pt. hd.

*Salop.*—Stokes v. Boycott, Esq., in replevin.

*Monmouth.*—Williams v. Stiven.

*Glamorgan.*—Doe d. Simpson v. John.

*Tried during Easter Term, 1845.*

*Middlesex.*—Hopkins v. Richardson.

*Trinity Term, 1845.*

*Middlesex.*—Rich v. Dix; Curling v. Shepherd.

*London.*—Sheringham v. Collins; Day, by her next friend, v. Edwards; Sedgwick v. Hammon.

*Tried during Trinity Term, 1845.*

*Middlesex.*—Paull and wife, executrix, &c. v. Simpson; Mitchell v. King.

*Michaelmas Term, 1845.*

*Middlesex.*—Wimberley v. Hunt; Baker v. Drew; The Queen v. Thornton; The Queen v. Gomperts; Gibbons v. Hunter and another; Goode v. Cochrane; Ford v. Beech; Jacobs v. Dawes.

*London.*—Buisson v. Staunton; Brown v. Harnor; Welsh and another v. Reed; Murrieta v. Oldfield; Nicoll v. Gillan.

*Stafford.*—Skerratt v. Christie and another; Biddestone and others, assignees, &c. v. Burdett.

*Essex.*—Rogers v. Kenney; Doe d. Goody v. Carter.

*Surrey.*—Gillett v. Ballivant; Youell v. Cross;

Archer v. Smyth; Doe d. Pennington and others v. Barrell and another.

*Northampton.*—Sutton, a pauper, v. Maguire.

*Cardiff.*—Taylor v. Clay and another; Doe d. Lord v. Kingsbury.

*Carmarthen.*—Protheroe v. Jones; Chambers, Esq. v. Thomas and another; Same v. Same; Same v. Same.

*Cardigan.*—Doe d. Jenkins and another v. Davies and others.

*Brecon.*—Maybery v. Mansfield.

*York.*—Smith v. Smith; Marshall v. Powell and another; Spence, a pauper, v. Meynell, Esq., and another; Doe d. Norton v. Norton; Bainbridge v. Bourne, the younger; Wilkinson v. J. Haygarth; Same v. Same; Bainbridge v. Lax and others.

*Durham.*—Smith v. Hopper and others; Reed v. Same; Hinde v. Raine and another.

*Devon.*—Doe d. Earl of Egremont and another v. Sydenham, clk.; Mayor, &c. of Exeter v. Harvey and another; Damerell v. Protheroe and others; Schank v. Sweetland.

*Cornwall.*—Marshall, Esq. v. Hicks.

*Somerset.*—Doe d. Earl of Egremont and others v. Williams and another.

*Bristol.*—Addison v. Gibson.

*Hilary Term, 1846.*

*Middlesex.*—Page v. Hatchett; Hunter v. Caldwell; Doe d. Tebbutt and others v. Brent and others.

*London.*—White and another v. Burnley; Bond and another v. Nurse and another; Turner v. Hambley; The Queen v. F. Kensington,

*Tried during Hilary Term.*

*Middlesex.*—Lovelock v. Franklyn.

*Easter Term, 1846.*

*Middlesex.*—Pemberton v. Vaughan; Thompson v. Pettitt and another; Vincent v. Dore, executrix.

*London.*—Curtis v. Pugh; De Freis v. Littlewood and another; Follett and others v. M'Andrew; Tucker v. Clarkson; The Queen v. Benjamin Parker.

*Kent.*—Doe d. Jacobs v. Phillips.

*Sussex.*—Standen v. Christmas; Kine v. Evershed.

*Surrey.*—Pemberton v. Colls, D. D.; Samuel v. Green.

*Durham.*—Hills and another v. Mesdard and another.

*York.*—Mountain v. Groves and another; North and another v. Gresham and another.

*Liverpool.*—Doe d. Haywood v. Tinsley.

*Chester.*—Joinson v. Oldfield; Davis v. Falk; Doe d. Groves v. Groves.

*Glamorgan.*—Doe d. Richards and another v. Evans; Doe d. Bennett v. Harvey and another.

*Carmarthen.*—Thomas, Esq. v. Fredericks, Esq.; Same v. Same.

*Lincoln.*—Chapman v. Rawson.

*Stafford.*—Whitmore and others, assignees, &c. v. Leak.

*Hereford.*—Evans v. Horniatt.

*Gloucester.*—Garbett and others v. Adams and others; Doe d. Dyke v. Dyke.

*Somerset.*—Parnell v. Smith and another.

*Devon.*—Wolmer and others v. Toby the younger.

## SPECIAL CASES AND DEMURRERS.

Dale v. Pollard and others, special case, stands over.

Stephenson, executor, &c. v. Newman, secy., &c. dem., stands over.

Dolby v. Rimington and another, dem.  
 Pennell and others, assignees, v. Rhôdes and another, special case.  
 Springett v. Morrell and another, dem.  
 Robinson v. Hawksford, special case.  
 Flanden v. Bunbury, special case.  
 Sharp v. Watts, dem.  
 Whittaker v. Richards, dem.  
 Frost v. Lloyd and another, dem.  
 Wilkinson v. Gaston, part heard  
 Westley v. Kromheim and others, special case.  
 Chamberlain v. Hammond, dem.  
 Scadding v. Eyles, dem.  
 Knight and others v. Gaunt, dem.  
 Chamberlain v. Hammond, dem.  
 Lawton v. Hickman, dem.  
 Sharpe v. Bluck, clk., dem.  
 Bryant and another v. Holmes, dem.  
 Nind v. Parry, dem.  
 Ranger v. Same, dem.  
 Laorne v. Oldfield, dem.  
 Herbert v. Booth and others, dem.  
 Newton v. Boodle, sued with others, dem.  
 Newton v. Rowe and Norman, sued with another, dem.  
 Fielding v. Daniels, dem.  
 Cobb v. Allan and another, special case.  
 Hutt v. Morrell, dem.  
 Williams, assignees, &c. v. Chambers, dem.  
 Eadon, the younger, v. Branscomb, Gt., one, &c. dem.  
 Blagg v. Gibson and another, dem.  
 Andrews v. Baron Lyndhurst, dem.  
 Nicoll v. Orgill, dem.  
 O'Neil, the younger, v. Bundle, dem.  
 Dow dem. Renow and another v. Ashley, special case.  
 Lymill and another v. Challenger, dem.  
 Cardwell and others v. Holgate, dem.  
 Bull and another v. Taylor and others, dem.  
 Ray v. Hirst, dem.  
 Smith v. Ball, dem.  
 Munden v. Duke of Brunswick, dem.  
 Doe d. Hawksworth v. Hawksworth, special case.  
 Parnell v. Jones, dem.  
 Mitchell v. Johnson, dem.  
 Levy v. Webb, dem.

### Common Pleas.

*Remanet Paper of Trinity Term, 1846.*

#### Enlarged Rules.

To 1st day.—Woolley and another v. Smith.  
 To 2nd day.—Tolson v. Bishop of Carlisle and others.

#### New Trials of Easter Term last.

*Middlesex*.—Gamble v. Kurtz, defendant's rule ;  
 Cranwell v. Cooper.  
*London*.—Siggers v. Paynter and another ; Boydell and another v. Harkness.  
*Bedfordshire*.—Coulthas v. Bowes, clk.  
*Somerset*.—Doe d. Harrison v. Hampson ; Doe d. Gaisford and others v. Stone.  
*Kent*.—Elston v. Gascoyne.  
*Surrey*.—Gibbons v. Alison.  
*Essex*.—Doe (Bayley and others) v. Foster ; Pig-gott v. Eastern Counties Railway Co. ; Gally v. Round, Esq.  
*York*.—Tempest and another v. Kilner ; Bowlby v. Bell.  
*Liverpool*.—Tootal v. Johnstone.

### CUR. AD VULT.

Patteson and others v. Holland and others.  
 To stand over till the *sci. fa.* in Queen's Bench is determined.  
 Doe (Woodall and others) v. Woodall and another.  
 Benson v. Chapman.  
 Holden v. Liverpool New Gas and Coke Company.  
 Powles Pub. Off. v. Page.  
 Beard v. Egerton and others.  
 Doe (Atkinson) v. Fawcett and others.  
 Cooper v. Shepherd.  
 Pott and others, assignees, v. Eyton and another.  
 Gibbs and another v. Flight and another.  
 Pryce v. Belcher.  
 Roberts v. Gruneison.  
 Rich v. Basterfield.  
 Gamble v. Kurtz, plaintiff's rule.

#### Demurrers, Trinity Term, 1846

Friday . . .	May 22	} Motions in arrest of judgment.
Saturday . . .	23	
Monday . . .	25	
Tuesday . . .	26	
Wednesday . . .	27	Special arguments

Benham v. Earl of Mornington.  
 Easton v. Peploe.  
 Smith v. Shirley.  
 Guyard v. Sutton.  
 Turner v. W. Browne.  
 Finniswood v. Pattinson.  
 Tuckwell v. Morris.  
 Carr v. Maude.  
 Dormay v. Borrodaile.  
 Fitzgerald and ux. v. Lane and another.  
 Coates v. Jones.  
 Reynolds and others v. Fenton.  
 Messent v. Reynolds.  
 Doe dem. Blomfield v. Eyre.  
 Hutton and another v. Thompson.  
 Joll and another v. Stewart.  
 Thatcher v. England, Knt.  
 Hayward v. Bennett.  
 Pannell v. Mill, Bart.  
 Rogers v. Richards.  
 Ablett v. Clarke.  
 Stephens and another v. Desborough.  
 Smart and another v. Sanders and others.  
 Toomer v. Gingell.  
 Wightman v. Green.  
 Boyson and another v. Gibson and others  
 Pownall and another v. Newark.  
 Williams v. Capper.  
 Sieveking and another v. Dutton.  
 Baker and another v. Palmer.  
 Mills v. Acres.  
 Barry and another v. Nesham and another.  
 Doe (Phillips) v. Rollings.

Friday . . .	May 29	} Special arguments.
Wednesday . . .	June 3	
Friday . . .	5	

### Exchequer.

#### PEREMPTORY PAPER.

#### Trinity Term, 1846.

To be called on the first day of the Term, after the motions, and to be proceeded with the next day, if necessary, before the motions.

*Date Rule Nisi*, April 27, 1846.—Benn v. Stockdale and another ; Stockdale and another v. Benn ;

Benn v. Stockdale and another; and in the matter of the arbitration between Robert Benn and Thomas Stockdale and John Stockdale.

6th May, 1846.—Sherwood v. Clark.

23rd April, 1846.—Parker v. Haines.

.. .. Parker v. Upfil.

.. .. Parker v. Middleton.

.. .. Parker v. Harris.

22nd April, 1846.—Price v. Richardson.

2nd May, 1846.—Waller v. Blacklock and others.

28th April, 1846.—Balmer v. Richmond.

22nd April, 1846.—Doe d. Stace and another v. Wheeler.

2nd May, 1846.—Ellis v. Hozier.

#### SPECIAL PAPER.

##### For Judgment.

Duncan v. Benson, dem.

(Heard 2nd June, 1845.)

Cooke and another v. Turner and others, special case.

(Heard 13th Feb. 1846.)

Ashley and others v. Pratt and others, special case.

(Heard 7th April 1846.)

Moneypenny v. Dering, by order of Vice-Chancellor Wigram.

(Heard 5th May, 1846.)

##### For Argument.

Offer v. Windsor, dem.

Griffiths v. Pyke, dem.

(To stand over at the request of parties until special case settled.)

The Dean and Chapter of Ely v. Cash, special case, by order of the Lord Chancellor.

(To stand over to amend case.)

Trail, Esq. v. Bonney, special case, by order of Mr. Baron Alderson.

(To stand over to amend pleadings.)

Wallis and others, executrix and executors, v. The Great Western Railway Company, dem.

Pardoe, executrix, &c. v. Price, special case, by order of Nisi Prius.

The Mayor, Aldermen, and Burgesses of the Borough of Salford v. Ackers, dem.

Brabam v. Wilkins, dem.

Henry v. Goldney, dem.

Ridsdale and another v. Merrell, dem.

Steadman v. Hockey, dem.

Nightingall v. Smith, special case, by order of Vice-Chancellor of England.

Yeats v. Pultney, dem.

Yeats v. Pollock, dem.

Torre v. West, dem.

Chantler and wife v. Lindsey and wife, dem.

Brindle v. O'Neil, and another, dem.

Doe d. Lloyd and others v. Jones, special case, by order of Nisi Prius.

Doe d. Lloyd and others v. Done, special case, by order of Nisi Prius.

Holford v. Crawshaw, dem.

Rigge v. Barbridge and others, dem.

Sabbertan v. Mitchell, dem.

Price and another, executors, &c. v. Woodhouse and another, dem.

Stride v. Waddy, dem.

Pilkington and another v. Cooke, Esq., dem.

Carr v. Andrews, dem.

Robinson v. Purday, special case, by order of Vice-Chancellor Wigram.

James and another v. Crane and another, special

case, by order of Nisi Prius.

Holloway and others v. Page, dem.

#### NEW TRIAL PAPER.

##### For Judgment.

Moved Michaelmas Term, 1845.

Bristol, Mr. Justice Erle.—Kynaston and others, assignees, &c. v. Davies and others.

(Heard 6th Feb. 1846.)

Moved Hilary Term, 1846.

Middlesex, Lord Chief Baron.—Thornett v. Haines. (Heard 28th April, 1846.)

##### For Argument.

Moved Michaelmas Term, 1845.

Middlesex, Lord Chief Baron.—Bunnett v. Smith. (2nd May, ordered to stand over until Michaelmas Term.)

Moved Hilary Term, 1846.

London, Lord Chief Baron.—Lamert v. Heath; Ackerman and others v. Ehrensperger.

Moved Michaelmas Term, 1845.

Staffordshire, Mr. Justice Williams.—Foley v. Botfield.

(22nd Jan. 1846.—Restored to the paper on the application of Mr. Serjeant Talfourd.)

Moved after the 4th day of Hilary Term, 1846.

Middlesex, Mr. Baron Platt.—Masters v. Abitbol.

Moved Easter Term, 1846.

London, Lord Chief Baron.—Daniels v. Fielding; Grant v. Maddox.

Middlesex, Mr. Baron Platt.—Harris v. Colley; Beamish v. Owens; Wotton v. Fructuoso, on affidavit.

London, Lord Chief Baron.—Goldcutt v. Beagin, on affidavits; No. 1. Fenwick v. Boyd; No. 2. Fenwick v. Boyd; Lawrie v. Douglas; Law v. Thompson; Walstab v. Spottiswoode; Filbey v. Hodgson; Hills v. Crosland; Engleheart v. Moore.

Stafford, Lord Chief Baron.—Bickley v. Boydell, jun.

Shrewsbury, Mr. Baron Platt.—Bradley v. Tonge; Garbett v. Yarborough.

Hereford, Lord Chief Baron.—Wheeler v. Dalley.

Monmouth, Mr. Baron Platt.—Mason v. Jenkins and others.

Aylesbury, Mr. Justice Maule.—Tarry, a pauper, v. Newman, Esq.

Maidstone, Mr. Baron Alderson.—Barnett v. Harris, on affidavit; Doe d. Stace and another v. Wheeler.

Maidstone, Lord Denman.—Smith v. Jeffries; Jackson and ux. v. Smithson.

Winchester, Mr. Baron Rolfe.—Pratt v. Betts.

Salisbury, Mr. Justice Erle.—Mayor, &c. of Poole v. Whitt.

Northampton, Mr. Justice Coltman.—Ashby and others, executrix and executors, on affidavits, v. Bates.

Derby, Lord C. J. Tindal.—Myddleton v. Lester.

Warwick, Lord C. J. Tindal.—Tart v. Darby and another; Geach and others, assignees, &c., v. Ingall, actuary, &c.; Huntingdon v. Grand Junction Railway Company.

York, Mr. Justice Patteson.—Naylor and another v. Scolah; Booth v. Mills.

York, Mr. Justice Coleridge.—Whalley and another v. Davison the Younger.

Liverpool, Mr. Justice Patteson.—Pilkington and another v. Scott and others.

**Liverpool, Mr. Justice Coleridge.**—Tavett v. Spencer; Unwin v. Horner and another; Haun v. Dalton; Ormerod and others on affidavit v. Chadwick and another, Esqs.

**C. P. Lancaster, Liverpool, Mr. Justice Coleridge.**—Ramabottom v. Duckworth and another; Fletcher v. Marshall and another; Mausden v. Newmarch and another.

**Carnarvon, Mr. Justice Williams.**—Jones v. Carter; Jones v. Foster; Owen v. Mann and others; Jones v. Mann and others; D. Hughes v. Mann and others; M. Hughes v. Mann and others; Griffiths v. Mann and others.

**Beaumaris, Mr. Justice Williams.**—Hughes v. Hughes and others.

**Chester, Mr. Justice Williams.**—Pott and others, assignees, v. Clegg, executors, &c.; Stanbury v. Nickson; Kearsley v. Cole; Chamberlaine v. The Chester and Birkenhead Railway Company.

**Swansea, Mr. Justice Wightman.**—Norris v. Barnes and others.

**City of Chester, Recorder of Chester.**—Seller and others v. Jones.

Moved after the 4th day of Easter Term, 1846.

**Middlesex, Mr. Baron Alderson.**—Swift v. Hawkins.

**London, Mr. Baron Platt.**—Cooper, Esq. P. O. v. Falkner.

### Exchequer of Pleas.

#### IN MIDDLESEX.

##### In Term.

1st Sitting, Monday	May 23
2nd Sitting, Tuesday	June 2
3rd Sitting, Tuesday	9

#### IN LONDON.

1st Sitting, Friday	May 29
2nd Sitting, Friday	June 5
(And by Adjournment if necessary,)	Saturday 6

##### After Term.

#### IN MIDDLESEX.

#### IN LONDON.

Saturday	June 13		Monday	June 15
(To adjourn only.)				

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment, from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

The Court will sit, during and after Term, at ten o'clock.

### PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

#### Royal Assents. (14th May, 1846.)

Indemnity.

Commons Inclosure.

Insolvent Debtors, (India).

#### House of Lords.

##### NEW BILLS.

**Real Property Conveyance.**—In committee. See the bill pp. 50, 70, *ante*. Lord Brougham.

**General Registration of Deeds.**—Lord Campbell. Deferred until the Corn Bill has passed.

**Religious Opinions Relief.**—Re-committed. Lord Chancellor.

**Punishment for deterring Prosecutors, Wit-**

**nesses, &c.**—In Committee. See the bill, 31 L. O. 472. Lord Denman.

**Real Property Burdens.**—In Select Committee.

**Metropolitan Buildings.**—For 2nd reading. See the bill, 31 L. O. 426.

**Railway Companies Dissolution.**—For 3rd reading. Lord Dalhousie.

**Railway Deposits.**—In Committee.

**Insolvent Debtors' Act Amendment.**—In Committee. Lord Brougham.

**Friendly Societies.**—In Committee.

**St. Austell Small Debts Court.**—In Committee.

#### Real Property Registration.

Petitions against, from Attorneys of—

Liverpool,  
Beverley, and  
East Riding.

#### House of Commons.

##### NEW BILLS.

**Administration of Criminal Justice.**—To be reported.

**Bankruptcy and Insolvency.**—For 2nd reading. 10th June. See the bill, 31 L. O. 569. Mr. Hawes.

**Roman Catholics' Relief.**—Re-committed. See the bill, p. 402, *ante*. Mr. Watson.

**Small Debt Courts:**

Salford, Hundred.—Re-committed.

Somerset,

Northampton,

Birkenhead. For 2nd reading.

**Poor Removal.**—In Committee. Sir J. Graham. See analysis of the bill, 31 L. O. 473.

**Highway Laws Amendment.**—For 2nd reading. Sir James Graham.

**Corresponding Societies, Lectures, &c.** Mr. T. S. Duncombe.

**Metropolis Interments.** Mr. Mackinnon. Death by Accidents Compensation. For 2nd reading.

**Deodands Abolition.** Mr. Bouverie.

**Total Abolition of the Punishment of Death.** Mr. Ewart.

### THE EDITOR'S LETTER BOX.

THE review of several new books shall be proceeded with as early as possible.

"Lex" is informed that it is not expected that the candidates for examination should answer *all* the questions under the three heads required by the examiners to be answered. They should answer *all* the questions they can. Common law and equity and one other branch are essential, but the remaining two should not be neglected.

Some communications are unavoidably deferred on account of the *long* schedule of the *Short Form* Conveyancing Bill.

# The Legal Observer.

SATURDAY, MAY 30, 1846.

—“Quod magis ad nos  
Pertinet, et noscire malum est, agitamus.”

HORAT.

## CONSTRUCTION OF THE ANNUITY ACTS.

### STATEMENT OF CONSIDERATION IN MEMORIAL OF ANNUITY DEED.

THE advocates for a general registration of deeds and conveyances contend, that to render such a registration effectual, or indeed useful for any purpose, a certain form must be prescribed, and a rigid adherence to it enforced, by enacting, that a deviation from the prescribed form should render the document inoperative. In such an event, how often, and to what extent, would the just claims of parties be defeated by an unintentional noncompliance with the prescribed forms? What has occurred with reference to enactments of a similar character, but more limited in their operation, affords some materials for an answer to this inquiry.

The memorial required to be enrolled under the Annuity Acts, has given rise to a class of cases in which the courts, putting a construction upon those acts, have felt bound to decide, that solemn instruments prepared with ordinary care, and expressing the clear intention of the parties, were wholly void for want of a compliance with certain prescribed forms. As the courts of law are bound to administer and not to make the law, these decisions, in a judicial view, are unexceptionable, but the hardship and injustice to individuals created by the state of the law which occasioned those decisions, are manifest. The Annuity Acts are not of ancient date, and the occasion of them is explained by the 17 Geo. 3, c. 26, s. 1, which recites, that “the pernicious practice of raising money by the sale of life annuities hath of late years greatly increased, and is much promoted by the se-

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creasy with which such transactions are conducted;” and it is therefore enacted—

“That a memorial of every deed, bond, instrument, or other assurance, whereby any annuity or rent-charge shall, from and after the passing of this act, be granted for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, shall, within twenty days of the execution of such deed, bond, instrument, or other assurance, be inrolled in the High Court of Chancery; and that every such memorial shall contain the day of the month and the year when the deed, bond, instrument, or other assurance bears date, and the names of all the parties, and for whom any of them are trustees, and of all the witnesses, and shall set forth the annual sum or sums to be paid, and the name of the person or persons for whose life or lives the annuity is granted, and the consideration or considerations for granting the same; otherwise every such deed, bond, instrument, or other assurance shall be null and void to all intents and purposes.”

This statute, after an experience of more than thirty years, was found to impose too many technical difficulties upon the grantees of annuities,\* and to relieve them it was repealed by the 53rd Geo. 3, c. 141, which enacted—

“That within thirty days after the execution of every deed, &c., whereby any annuity or rent charge shall, from and after the passing of this act, be granted for one or more life or lives, or for any term of years or greater estate, determinable on one or more life or lives, a memorial of the date of every such deed, &c., of the names of all the parties and of all the witnesses thereto, and of the person or persons for whose life or lives such annuity or rent charge shall be granted, and of the person or persons by whom the same is to be beneficially received, the pecuniary consideration or considerations

\* Per Bayley, J., in *Crowther v. Wentworth*, 6 Barn. & Cres. 366; 9 D. & R. 286, S. C.

for granting the same, and the annual sum or sums to be paid, shall be enrolled in the High Court of Chancery, in the form or to the effect following, with such alterations therein as the circumstances of any particular case may reasonably require; otherwise every such deed, &c., shall be null and void to all intents and purposes." In the form of memorial in that section, in the column headed, "consideration and how paid," are these words and figures by way of example:—"100*l.* paid in money; 500*l.* paid in notes of the Governor and Company of the Bank of England, or other notes or bills of exchange, as the case may be."

Under the earliest of the statutes recited it was held, that all considerations, whether pecuniary or otherwise, must be stated, and that where a pecuniary consideration, or part of it, was paid by drafts on bankers, or promissory notes, it was necessary to set them out, and mention the time when they were payable;<sup>b</sup> and in one case,<sup>c</sup> where a memorial stated, that "part of the consideration money, 199*l.* 10*s.*, was paid by a draft of J. Harvey on Messrs. Lockharts, bankers in Pall Mall, which said draft was duly honoured," although it was urged that a banker's cheque is always considered as money, the court held the memorial to be insufficient. So in *Morris v. Wall*,<sup>d</sup> the memorial stated, that the consideration money was paid "in Bank of England notes, and country bank notes," without specifying the dates and times of payment of the latter, and it was held to be necessary to state the time of payment, a decision subsequently confirmed in *Duke v. Rogers*.<sup>e</sup>

The question as to the sufficiency of the statement of the consideration in the memorial of an annuity deed, enrolled under the statute 53 Geo. 3, c. 141, was brought under the consideration of the Court of Common Pleas in a very late case,<sup>f</sup> upon a rule calling on the executors of William Abbott to show cause why a warrant of attorney and judgment signed thereon, and an annuity deed and memorial, should not be set aside.

It appeared upon affidavit, that the consideration money for the annuity, which was granted so far back as 1828, was 450*l.*, and the memorial under the heading "consideration" was in these words:—"The sum of 450*l.*, paid by the said W. Abbott to the said J. E. M.

Douglas, in his own proper person, in manner following, that is to say:—23*l.* by a draft of even date with the aforesaid recited indenture of assignment, drawn by the said W. Abbott on Messrs. Barnett, Hoare, & Co., 17*l.* in sovereigns, and the residue of the aforesaid sum of 450*l.*, being 410*l.* in notes of the Governor and Company of the Bank of England, payable to bearer on demand; and which said three several sums make the aforesaid consideration of 450*l.*" The objection was, that the memorial did not set forth when the draft for 23*l.* on Barnett, Hoare, & Co., was payable. In answer, an affidavit was used to which the identical draft for 23*l.* was annexed, and it appeared to be a draft payable on demand.

The court, however, was of opinion, that the objection must prevail, the memorial not being such as was required by the statute 53 Geo. 3, c. 141. It was true that by that enactment it was only necessary to mention in the memorial pecuniary considerations, but they were to be stated in the form prescribed by the act. If part of the consideration had been a bill of exchange, it could not have been contended, that it would be unnecessary to state the time when it would become payable, that being necessary to show the real nature and value of the consideration. The same necessity existed for stating when a draft was payable. It was suggested that a draft meant a draft payable on demand, but the courts in former cases refused so to construe it, and this court was now bound by those decisions, and compelled to declare the memorial in question insufficient. The result of this decision was, that the deed, bond, instrument, or other assurance by which the annuity was granted, was null and void, although the court only felt itself called upon to interfere by setting aside the judgment signed on the warrant of attorney.

Whether considered as regards principle or authority, in a judicial view, the decision of the Court of Common Pleas appears to have been clearly right; but apart from legal considerations, the consequence of the decision is, that after an interval of nearly twenty years, and after the death of the grantee, a security for which he paid a *bond fide* consideration, and upon which he might have fairly reckoned as affording some provision for those who survived him, turns out to be utterly worthless, solely because the words "payable on demand" were ignorantly or inadvertently omitted in the memorial. Cases of this description suggest the inexpediency of making the validity of transactions between man and man depend upon unnecessary forms, which, however simple they may appear to the framers, as practical experience proves, are not always strictly complied with.

<sup>b</sup> *Ramball v. Murray*, 3 T. R. 798; *Berry v. Berry*, 6 T. R. 690.

<sup>c</sup> *Robt. P. Gwynne*, 5 T. R. 328.

<sup>d</sup> *Box & P.*, 100.

<sup>e</sup> *2 Brod. & Bing.* 19; 49 R. Moore, 402.

<sup>f</sup> *Abbott v. Douglas*, 1 Com. Bench, p. 483.

## EVIDENCE IN DIVORCE CASES.

REQUIRED BY THE HOUSE OF LORDS.

IN the ecclesiastical tribunals the effect of a confession of adultery as matter of evidence in a suit of divorced *a mensa et thora*, is governed by the Canon No. 105, "respecting marriage," passed by the Chamber of Convocation, in the year 1603, whereby it is enjoined, that in all proceedings of divorce, "credit be not given to the sole confession of the parties themselves." A confession of adultery, therefore, *per se*, will not be sufficient to justify a sentence of divorce in the spiritual courts, although, when coupled with other evidence, such confession will have the greatest weight.

The rule is pretty nearly the same in the House of Lords upon bills of divorce *a vinculo matrimonii*; as appears by a very recent case in which the point was so decided by Lord Brougham, who presided on the woolsack. We are now referring to Captain Creagh's Divorce Bill, which came before their lordships on Tuesday last, and in which one of the witnesses having given evidence of his having found the guilty paramours living together in Belgium, he proceeded to state the substance of Mrs. Creagh's acknowledgment, not only that she had committed the alleged adultery, but that she was resolved never to part from the man with whom she had eloped.

Mr. Macqueen, as counsel for the petitioner, submitted that] this evidence was sufficient. But Lord Brougham, however, ruled that further proof was indispensable, as the house were never satisfied with a mere confession, whether written or oral. Other evidence was accordingly adduced; and the proof being at last satisfactory, the bill was read a second time, and committed in due course.

We have thought it right to notice this case because there is an opinion entertained by some members of the profession that a confession of adultery is not at all receivable in cases of this description. Such a confession is, however, most important, though not to be regarded as conclusive, unless supported by collateral circumstances.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### ANNUAL INDEMNITY ACT.

9 VICT. c. 13.

An Act to indemnify such Persons in the

United Kingdom as have omitted to qualify themselves for Offices and Employments, and to extend the Time limited for those Purposes respectively until the 25th day of March, 1847.

14th May, 1846.

[The general Act relating to Attorneys and Solicitors, 6 & 7 Vict. c. 73, having provided for cases in which articles of clerkship were omitted to be registered, &c., the present act contains no clause particularly affecting the profession, and we therefore give only an abstract of the act.]

1. Reciting 1 G. 1, st. 2, c. 13; 13 C. 2, st. c. 1; 25 C. 2, c. 2; 30 C. 2, st. 2; 8 G. 1, c. 6; 9 G. 2, c. 26; 18 G. 2, c. 20; 6 G. 3, c. 53; 4 G. 4, c. 17; 10 G. 4, c. 7. Persons who have omitted to qualify themselves as required by the recited acts are indemnified and allowed further time until the 25th March, 1847.

2. Indemnity to those who have omitted to make and subscribe the oath and declaration required by the Irish Act of 2 Anne until the 25th March, 1847.

3. Not to indemnify persons against whom final judgment has been given.

4. Not to exempt justices acting without legal qualification.

5. Admissions to corporations may be stamped after the time allowed, viz., on or before 25th March, 1847.

6. Not to restore persons to any office avoided by judgment.

7. General issue may be pleaded.

## NEW BILLS IN PARLIAMENT.

### VEXATIOUS ACTIONS.

THIS is a bill for protecting from vexatious actions persons discharging public duties. It sets forth in the preamble, that it is expedient that all persons discharging public duties, whether legislative, judicial, or ministerial, and whether imposed by the common, the ecclesiastical, or the statute law of the realm, should be protected from vexatious actions; And that it would greatly conduce to this salutary end, if the law respecting notices of actions, limitations of actions, venue, tender of amends, payment of money into court, pleas of the general issue, and costs, were, so far as regards actions or suits commenced against any of such persons, uniform. By 5 & 6 Vict. c. 97, the objects here contemplated were partially effected; but it is expedient to alter some of the provisions therein contained, and to embody the remainder in a more comprehensive act: it is therefore proposed—

1. To repeal that act.

2. That 21 Jac. 1, c. 12; and so much of 42 G. 3, c. 85, as extends the provisions of the 21 Jac. 1, to any persons who may by law commit persons to safe custody within this kingdom; and also so much of any clause, pro-



vision, or enactment in any act of parliament as affords to any person acting or intending to act under or by virtue, or in pursuance or under the authority or in execution, of any act of parliament, any special protection or privilege in regard to notice of action, notice of cause of action, limitation of action, venue, tender of amends, payment of money into court, pleading the general issue and giving special matter in evidence under it, or costs, shall be and the same are hereby respectively repealed.

3. That nothing herein contained shall be construed to repeal or alter so much of the 42 G. 3, as relates to persons who may by law commit persons to safe custody out of this kingdom, or so much of any other act of parliament as affords any such protection or privilege as aforesaid to any person while acting or intending to act out of this kingdom under or by virtue, or in pursuance or under the authority or in execution, of any act or acts, statute or statutes, ordinance or ordinances, or law or laws, or lawful authority, in any plantation, island, colony, or foreign possession of her Majesty.

It then provides that notice of action and of the cause of action shall be given as follow :—

4. That no action or suit shall be commenced against any person for any act done or omitted to be done by him whilst acting or *bona fide* intending to act in the discharge of any public duty, whether legislative, judicial, or ministerial, and whether imposed by the common law, the ecclesiastical law, or any act of parliament now passed or hereafter to be passed, until the full expiration of one calendar month next after notice in writing shall have been delivered to him, or left at his usual or last place of abode, by the person who intends to commence such action or suit, or by his attorney or agent; and such interval of one calendar month between the service of the notice and the commencement of the action or suit, shall in all cases be sufficient.

5. That such notice shall contain a clear and explicit statement of the cause of action, and of the name and place of abode both of the person who intends to commence such action or suit and of his attorney or agent; and no evidence shall be admissible on behalf of the plaintiff on the trial of any such action or suit except such as supports the cause of action so stated in such notice.

The limitation of actions and the venue are thus enacted :—

6. That no action or suit shall be commenced against any person for any such act or omission as aforesaid after the full expiration of six calendar months next after the cause of action shall have arisen, or in the case of continuing damage after the full expiration of three calendar months next after such damage shall have ceased, but in all cases the plaintiff shall be entitled to commence any such action or suit at any time before the expiration of such six months and three months respectively; pro-

vided that the provisions last mentioned touching the periods of six months and three months shall not extend or apply to any actions brought or to be brought in this country in respect of any matter or thing done or happening in any place beyond the seas out of *Europe*.

7. That if any action or suit hereafter to be commenced against any person for any such act or omission as aforesaid the venue is laid in the county, district, or place where the cause of action is alleged to have accrued, the trial shall be had in such county, district, or place, unless both the plaintiff and defendant consent and agree that the venue shall be changed, and that the trial shall be had in some other county, district, or place; and if in any such action or suit as aforesaid the venue is laid in any other county, district, or place than the county, district, or place where the cause of action is alleged to have accrued, the defendant shall have the same privilege as a defendant in ordinary transitory actions now has of changing the venue, and in the event of his exercising such privilege the plaintiff shall not be entitled to bring back the venue to the original county, district, or place, merely on an undertaking by him to give material evidence in such county, district, or place: Provided always, that nothing herein contained shall preclude the court in which such action or suit shall be brought from directing that the venue shall be brought back to the original county, district, or place, if the plaintiff can show to the satisfaction of such court that there is reasonable ground for believing that a fair trial cannot otherwise be had.

The following are the provisions regarding tender of amends and payment of money into court.

8. That any person as aforesaid who has been served with any such notice of action as aforesaid may, at any time within one calendar month after such notice has been received by him, tender amends to the person complaining, or his attorney or agent, and, in case the same is not accepted, plead such tender in bar of any action to which such notice refers, either alone or together with the general issue, or any other pleas which the court wherein such action is pending, or any one of the judges of the superior courts at common law, may allow; and such plea of tender need not be signed by counsel, and shall have the same effect as the like plea now has in ordinary actions, excepting only that it shall not, neither shall the fact of tender, be regarded in the light of any admission of the cause of action.

9. That any person as aforesaid who has neglected to tender amends or has tendered insufficient amends within the time above specified may, in the event of any such action as aforesaid being brought against him, pay into the court in which such action is pending any sum of money by way of compensation or amends, and plead such payment, either alone or together with the general issue, or any other pleas that the said court or any one of the

judges of the superior courts at common law may allow; and no permission of the said court or of any judge shall be necessary before such payment shall be made, neither shall such plea of payment of money into court be signed by counsel, but such plea shall have the same effect as the like plea now has in ordinary actions, excepting only that it shall not, neither shall the fact of paying money into court, be regarded in the light of any admission of the cause of action.

10. The plea of general issue may be pleaded.

Then come the clauses as to *Costs* :

11. That the defendant in any such action or suit as aforesaid who succeeds, either by obtaining a verdict or by having judgment in his favour upon demurrer, or by the plaintiff being nonsuited, nonprossed, or discontinuing his action, shall not be entitled to double, treble, or other special costs, but shall receive such full and reasonable indemnity as to all costs, charges, and expenses incurred in and about his defence thereto as shall be taxed by the proper officer in that behalf, subject to be reviewed in like manner and by the same authority as any other taxation of costs by such officer.

12. That if in any such action or suit as aforesaid the plaintiff shall obtain a verdict, he shall not be entitled to recover any larger costs from the defendant than the sum of 10*l.*, if the court or judge before whom the action or suit shall be tried shall certify on the record that in its or his opinion the defendant has acted *bond fide*, and has had reasonable ground for supposing that his conduct has been justifiable; but unless the said court or judge shall so certify, the plaintiff who obtains a verdict shall be entitled to costs in the same manner and to the same extent as a successful plaintiff is now entitled in ordinary actions.

13. That nothing herein contained shall extend to any action or suit commenced before the expiration of three calendar months next after the passing of this act.

14. That, so far as regards any privilege or protection afforded by this act, the question of the *bond fide* of the defendant shall be for the decision of the court or judge before whom the action or suit shall be tried.

## REASONS AGAINST THE SALFORD HUNDRED COURT BILL.

We understand that this and other local court bills would be suspended until a general measure were introduced, but it appears that the promoters are still pressing forward. We therefore state the following objections :—

The object of this bill is to extend the jurisdiction of the Hundred or Wapentake Court of Salford, from forty shillings to fifty pounds, and to make it a court of record, with all the powers incident to such courts, includ-

ing the power to fine and imprison; and it provides, that after applying such part of the fees as the judge of the court shall direct towards the expenses of the court, the monies remaining shall be paid, one-fourth thereof to the Earl of Sefton, the steward of the court, (who holds office by grant from the crown,) and his descendants,—one-fourth to the judge, —one-fourth to the deputy-steward, and the remaining fourth to provide clerks, &c.

It is submitted that the bill is unnecessary, and on many grounds objectionable.

I. By an act passed in the last session of parliament, 8 & 9 Vict., c. 127, s. 9, her Majesty, with the advice of her privy council, may enlarge the jurisdiction of any courts for the recovery of small debts to all debts and demands not exceeding *twenty pounds*, and also make regulations for holding such courts both as to time and place; and if a case could be made out for the extension of the jurisdiction of the Salford Hundred Court, it is submitted that the ends of justice would be more effectually answered by an extension of the jurisdiction by means of that act, than by a bill which would in effect be the means of establishing within the Hundred of Salford a court with powers and machinery similar to those of the courts of law at Westminster.

II. The legislature, hitherto, has confined the jurisdiction of courts for the recovery of small debts to five pounds, ten pounds, or fifteen pounds, and in the last general act to twenty pounds; whereas it is proposed by the present bill to extend the jurisdiction to fifty pounds.

III. It is submitted, that it is neither necessary nor expedient to enlarge the jurisdiction of the Salford Hundred Court, because this district is abundantly supplied with courts for the recovery of debts :—

1. Her Majesty's Court of *Common Pleas at Lancaster* exercises within the county a jurisdiction for the decision of civil suits concurrently with the courts at Westminster.

2. There are *courts of request* in all the principal towns *within the Hundred of Salford* : viz. Manchester, Stockport, Ashton-under-Lyne, Bolton, Bury, Oldham, and Rochdale, with jurisdiction to the amount of fifteen pounds, which are more convenient to the inhabitants of those districts, than if compelled to attend a court, in which they must employ attorneys at a distance from their homes.

3. The *Borough Court* of Manchester will also shortly come into operation.

4. The *county court* which the under-sheriff, for the accommodation of parties residing within the Hundred of Salford, holds at Manchester once a month, for the trial of causes arising in that hundred. The county court has already jurisdiction to an unlimited amount; and by the express provisions of a statute, no cause under ten pounds is removable from it without bail. The sheriff is appointed by the Queen, in right of the Duchy of Lancaster. The business is transacted by his under-she-

riff; and two barristers of great ability and experience are appointed by him to preside as assessors on the trial of causes.

IV. Though the fees in the county court are small, a considerable income arises to the sheriff from the quantity of business done. If this bill should pass into a law, it will tend to increase the private property of an individual, to the injury of the sheriff for the time being, of this county, whose expenses of the shrievalty are defrayed out of the fees and profits of the office, and which expenses, from the peculiar circumstances of the county of Lancaster, are much greater than in any other county. And if the fees of the county court, for business arising within the hundred of Salford, be taken from the sheriff, and given by this bill to the steward and other officers of the hundred court, a large portion of the expenses of the sheriffs of this county will be thrown upon the private incomes of the gentlemen filling the office of sheriff.

Such are the reasons against this measure, in particular; and the following are

#### OBJECTIONS TO LOCAL COURTS,

In general, with an exclusive jurisdiction (except as to small debts):—

1. They are not wanted, because the machinery of the superior court is, or may easily be made, available, for every really useful purpose proposed by the new system, without increase of staff or additional expense to the public; and this is under the constant and immediate control of the judges, as are the attorneys, and other officers of the courts.

2. The local courts will entail a heavy expense in the salaries of judges, clerks, &c. &c., which, if the experiment fail, (as is to be expected,) will have been wholly thrown away.

3. There will be a great, and very objectionable, increase of patronage in the numerous appointments to be made, and rights to compensation created, if future alteration be made.

4. The proposed district on the case in question is too large: one or both of the parties will, in five cases out of six, be put to great personal trouble, expense, and loss of time, in the various stages of the proceeding.

5. Not one person in twenty will be found to accept the office of steward capable of discharging its duties to the satisfaction of suitors:—Dissatisfaction will hence arise to the judicial system in general, which has hitherto maintained a high state in the estimation of the public, and this will seriously affect the administration of justice.

6. It is a mistake to suppose that in small actions justice is not obtained, both expeditiously and at little cost, through the central or metropolitan system. Railways and the penny postage have brought London within a few hours of every part of the kingdom; and it is no extravagance to say, that two county towns, distant ten miles from each other, have practically less facility of intercourse than either has with the metropolis, though one

hundred miles off. Again, the departmental arrangement of agency business, and the scale on which it is carried on, insure a regularity, despatch, and economy, the advantages of which can hardly be over-estimated, and which it is vain to suppose can be attained in any provincial establishment.

#### FORFEITURE OF LEASEHOLDS.

IN searching for the decisions bearing on the old rule in *Dumper's* case, stated at p. 45, *ante*, we noted the following cases in regard to the Forfeiture of Leaseholds for non-repair, neglecting to work mines, &c.—which we trust will be useful to many of our readers.

##### NON-REPAIR.

Where a lease contained covenants to keep the premises in repair, and to repair within three months after notice, and a clause of re-entry for breach of any covenant, and the premises being out of repair, the landlord gave a notice to repair within three months: *Held*, that this was a waiver of the forfeiture incurred by breach of the general covenant to keep the premises in repair, and that the landlord could not bring ejectment until after the expiration of the three months. *Doe d. Morecraft v. Meux and others*, 4 Barn. & Cr. 606. 1825.

Ejectment for a forfeiture. *A.*, by an agreement in writing, let to *B.* a house at 60*l.* a year, to be paid quarterly; and *B.* agreed within three calendar months to erect a shop-front, and otherwise repair, paint, paper, and whitewash the house. And it was further agreed that if *B.* did not erect the shop-front within three months, it should be lawful for *A.*, or his agents, to re-take possession of the premises, and the agreement should be null and void. *B.* continued in the possession of the premises, and enlarged the window; but as the plaintiff contended, did not erect a shop-front. It appeared, also, that after a quarter's rent had become due, and after the expiration of three months from the date of the agreement, *A.'s* son, the father being too ill to attend to business, made a demand of a quarter's rent, which *B.* offered to pay if he would indemnify him for a sum which he had paid as a penalty to *A.'s* lessor for carrying on a trade in the premises, which was refused. At the trial, *B.*, the defendant, contended that he had made a shop-front which answered the purpose of his trade; and he offered to show that *A.* held the premises under a lease from *C.*, which contained a clause imposing a penalty upon the lessee if he allowed a trade to be carried on upon the premises, from which it was to be inferred that the words shop-front in the agreement were used in a peculiar sense; but this evidence was rejected: *Held*, that such evidence was clearly inadmissible to explain the meaning of the words shop-front in the agreement. *Held*, also, it not having been proved that *A.* himself had had any no-

tice of the nature of the alterations, that the son had not sufficient authority to waive the forfeiture. *Quere*, whether the demand of rent which became due subsequent to a forfeiture amounts to a waiver of the forfeiture. *Held*, also, that the proviso in the agreement, that it should become "null and void," made it a lease voidable only at the election of the lessor. *Doe d. Nash v. Birch*, 1 Mee. & W. 402. Easter Term, 1836.

A lease of lands, &c., by *A.* to *B.*, contained a general covenant by *B.* to repair, and a further covenant that *A.* might give notice to *B.* of all defects and want of repair; and if *B.* did not repair the said defects within two months, *A.* might enter and do the repairs himself, the expense of which *B.* was to repay at the time of paying his next rent, and if he did not do so, *A.* might distrain on him for the expense as in case of rent in arrear. There was also a power to *A.* to re-enter upon breach of any covenant. The premises being out of repair, *A.* gave *B.* notice to repair within six months, and that if *B.* did not repair within that time, he would perform the repairs, and charge *B.* with the expense. The premises were not repaired within the six months. During that time a negotiation was entered into by *A.* and *B.*, and after the expiration of the six months, *A.* gave notice to *B.* that if he did not agree to certain terms in three days, *A.* would hold him to the covenants in his lease. *B.* did not agree. *Held*, that *A.* could not recover in ejectment for a forfeiture, he having neglected to perform the repairs and distrain on *B.* for the expense, and the general power to re-enter not being received by three days' notice. *Semble*, that where a power of re-entry for breach of covenant is reserved in a lease, and the reversion descends to co-parceners at common law, one alone cannot maintain ejectment for breach of the covenant. *Doe d. Baron and Baroness de Rutzen v. Lewis*, 5 Ad. & E. 277. June 2, 1836.

#### NEGLECTING TO WORK MINES.

A lease of coal mines reserved a royalty rent for every ton of coals raised, and contained a proviso that the lease should be void to all intents and purposes if the tenant should cease working at any time for two years. After the working had ceased more than two years, the lessor received rent: *Held*, that a tenancy from year to year was not thereby created, for the lease was not absolutely void by the cessor to work, but voidable only at the option of the lessor, and that he might avoid the lease upon any cessor to work commencing two years before the day of demise in the ejectment. *Doe d. Bryan v. Banks*, 4 Barnewall & Alderson, 401. Easter Term, 1821.

Trespass for breaking and entering the lands of the plaintiff and sinking pits. Plea, that before the plaintiff had anything in the said lands, one *U.* was seised in fee of one undivided third part therein, and by indenture granted to *B.*, licence to dig, mine, &c., throughout his one-third part, with liberty to erect engines, &c., for the term of twenty-one

years; that before the expiration of the term, the grantor died, and his executrix became legally entitled to the enjoyment of the licence, and because she could not enjoy it so fully as it was lawful for her to do without committing the supposed trespasses, the defendant, as her servant, entered upon the said lands, and upon the plaintiff's possession, and committed the same. Replication, that the supposed licence was granted subject to a condition, "that if the grantor, his executors, &c., should neglect to work the mines for a certain time, or should fail in the performance of all or any of the covenants, then and from thenceforth the indenture and the liberties and licences thereby granted should cease, determine, and be utterly void and of no effect." Averment, that the grantee, for the space of time exceeding that specified, neglected to work the premises, contrary to the condition, and the licence thereby became utterly void: *Held*, on general demurrer to the replication, that the word void in the proviso meant voidable at the election of the grantor, and therefore, that it was necessary for the plaintiff to allege that the grantor or some person claiming under him (which it was not shown that the plaintiff did) had by some act evinced his intention to avoid the licence. *Roberts v. Davey*, 4 Barn. & Ad. 664. April 23, 1833.

#### NON-PAYMENT OF RENT.

A proviso in a lease for years, (whereby the rent is payable on a day certain at the mansion house of lessor,) that if the rent shall be unpaid for forty days after the day whereon it is reserved, (although not demanded,) the lease shall be void, does not make the lease voidable by the lessee by reason of his having oversteaid the forty days allowed for payment; and in debt by lessor on bond, given by lessee and defendant in a penal sum, conditioned for payment of said rent at the day and place mentioned in said lease. Plaintiff may assign for breach non-payment of rent at the day and place without showing a demand of the rent. *Rede v. Farr*, 6 Maule and Selwyn, 121. Feb. 10, 1817.

Where a lease contained a proviso, "that if the rent should be in arrear for twenty-one days after demand made, or if any of the covenants should be broken, then the term thereby granted, or so much thereof as should be then unexpired, should cease, determine, and be wholly void, and should be lawful to and for the landlord upon the demise premises wholly to re-enter, and the same to hold to his own use, and to expel the lessee." *Held*, that this, in the event of a breach of covenant, made the lease voidable and not void, and that the landlord was bound to re-enter in order to take advantage of the forfeiture, and that he waived it by a subsequent receipt of rent. *Arnsby v. Woodward*, 6 Barn. & Cr. 519. May 19, 1827.

An action of covenant lies for rent reserved by indenture, and accruing before a re-entry for a forfeiture, notwithstanding the lessor under such re-entry is to have the premises

again "as if the indenture had never been made." *Hartshorn v. Watson*, 4 Bing. N. C. 179. January 17, 1838.

The following are a few instances of forfeiture, not within the other classes:—

By an agreement entered into with executors for the purchase of a leasehold public-house, and the goodwill and licences connected with it, the household furniture, stock in trade, and other effects upon the premises, were to be taken by the purchaser at a valuation, and possession was to be delivered up to him on the 29th of Sept., 1821; the valuation was made, but on the 29th of Sept., the purchaser alleging that there was a defect in the title to the leasehold, refused to perform his contract; the executors filed a bill for specific performance, but in the meantime remained in possession of the house, and carried on the business. *Held*, that though the executors were intitled to a decree for specific performance, and though the purchaser had done wrong in refusing to perform the contract, he could not be made answerable for the trade which had been carried on in the premises since September 1821. That he could not be compelled to take that portion of the stock in trade on the premises at the time of the decree, which was not there at the date of the agreement, but had been substituted for such parts of the old stock as had been consumed in the usual course of business. That the purchaser ought to be charged with the rent, taxes, and outgoings paid by the executors since September 1821, and with interest on the sums so paid by them. That the purchaser was not entitled to any occupation—rent, or other allowance for the use of the house and furniture by the executors during the period that elapsed after September 29, 1821. *Quære*. As to the construction of a proviso in a lease, that, in certain events, the lease shall cease to be void, and the lessor may re-enter. *Dakin v. Cope*, 2 Russ. 170, 1824, February 25; 1826, June 1, August 25, September 1; 1827, April.

A testator bequeathed the dividends of certain stock to his nephew, solely for the maintenance of himself and family, declaring that such dividends should not be capable of being charged with his debts or engagements, and that he should have no power to charge, assign, anticipate, or encumber them; but that if he should attempt so to do, or if the dividends by bankruptcy, insolvency, or otherwise, should be assigned or become payable to any other person, or be or become applicable to any other purpose than for the maintenance of the nephew and his family, his interest therein should cease, and the stock be held upon trusts for his children. Long subsequently to the date of the will, and a few weeks prior to a codicil confirming it, the nephew took the benefit of the Lord's Act (1 Geo. 4, c. 119) in the usual way, and some years after the testator died: *Held*, that this insolvency operated as a forfeiture of the life interest given to the

nephew by the will. *Yarnold v. Moorhouse*, 1 Russ. & M. 364. March 24, 1830.

A purchaser cannot rescind his own contract at an auction on the ground that he has refused to pay the auction duty, pursuant to the conditions of sale, notwithstanding the statute 17 Geo. 3, c. 50, enacts, that in case of such refusal, the bidding shall be null and void to all intents and purposes. *Mains v. Freeman*, 4 Bing. N. C. 395. April 27, 1838.

## NOTICES OF NEW BOOKS.

*The Practice of the High Court of Chancery.* By EDMUND ROBERT DANIELL, F.R.S., a Commissioner of the Court of Bankruptcy. Second Edition: with considerable Alterations and Additions, adapting the Text to the Last General Orders and the most Recent Decisions of the Court. By THOMAS EMERSON HEADLAM, M.A., Barrister-at-Law. In Two Volumes. London: R. & V. Stevens & G. S. Norton. Pp. 1869.

JUST twelve months have elapsed since the publication of the Orders of May 1845, and the interval which passed before they came into operation, allowed time for considering and discussing the numerous alterations they effected in the practice of the court. This was a considerable arrangement for the practitioner. Various editions of the orders were published with notes and comments, and in our humble vocation we also endeavoured from time to time to prepare our readers for the coming change. Two Terms and the Sittings after them have now tested the efficiency of the Orders. By a very convenient arrangement, the judges on any serious question arising on the construction of the orders conferred together, and thus the points which arose have been conclusively settled.

We have been enabled in our reports, to state all the material points immediately on their determination, and our Analytical Digest has presented the substance of these decisions in a collected form. This plan, so useful to the busy practitioner, will be continued. It will also essentially aid the student, for whilst pursuing a systematic course of reading amongst the standard treatises, he will find that a perusal of the current decisions and the discussion of points of present interest, will relieve his labours and facilitate his progress.

The extensive changes effected in the practice of the courts, and the new duties

which have devolved upon the solicitors by the transfer to them of the business of the late clerks in court, must render this new edition of Mr. Daniel's work highly acceptable. Notwithstanding, however, the time which has elapsed since the Orders of last May came into force, Mr. Headlam, the new editor, has not found it practicable to incorporate the decisions on the construction of the Orders into the body of the work.

"No slight difficulty, (he says,) arose from the fact, that the Orders had not come into operation at the time when the greater portion of this work was published, and consequently the text was prepared, and an interpretation put upon them without the aid of any judicial decisions. The plan adopted has been not to publish them continuously in a supplement, but to introduce them wherever the subjects they relate to are discussed, together with an explanation of the manner in which they affect the previous practice of the court."

Mr. Headlam has now prefixed a notice of the cases which have subsequently occurred, with directions for inserting them in the text, so as to bring down the authorities throughout both volumes to the present time.

He truly observes, that since the publication of the first edition of Mr. Daniell's Practice—

"More extensive changes have taken place in the practice of Chancery, than in any other period of similar duration in the annals of the court. Not only have numerous and most important Orders been issued, but the increase in the number of the Courts of Equity, and the great attention now bestowed on reporting their decisions, have multiplied the sources from which conclusions at law, and the rules of practice are ordinarily deduced."

He has consequently been compelled to introduce much new matter, and his object has been so to remodel the text as to render it as nearly as possible what it would have been, had Mr. Daniell now published it for the first time.

In pursuance of this object, when a more important case than that quoted in the first edition has occurred, he has substituted in the text, the recent for the older authority. In some few instances, also, where it appeared that a subject was treated of at greater length than was due to its importance, the facts of some of the cases have been left out in the text, but whenever this has been done, reference has been made by note to the cases so omitted.

In consequence of the changes produced by the recent General Orders, chapters 7, 8, 9, 17, and 19 of the original work have been almost entirely rejected, and new chapters substituted

in their place, viz., Chapter 23, on Writs and Orders in the Nature of Injunctions; 37, on Payment of Money or Transfer of Stock out of Court; 38, on the Production of Documents; 39, on Petitions for the Appointment of Guardians and Orders of Maintenance, &c.

The last chapter on the Statutory Jurisdiction is of constantly increasing importance. This jurisdiction is exercised upon petitions usually unopposed, and consequently the practice concerning it is but little shown in the reported cases or in the books of practice. This chapter comprises the course of proceeding under the statutes relating to Charities; Trustees; Solicitors; Arbitrations; Infants; Fines and Recoveries; Railways; Municipal Corporations; Drainage, &c. &c.

In the arrangement of a book of practice, little of novelty can be expected. It must obviously be written in the usual order of a suit. The only opportunity which the writer possesses of distinguishing himself from others, is in disposing of interlocutory and special proceedings, varying in different causes, and some of them rarely occurring. The following is an outline of the present edition:—

1. On the commencement of a suit.
2. Of the persons by whom a suit may be instituted.
3. Part 1st, Of persons who are absolutely disqualified from suing in equity.—Part 2nd, Of persons who are disqualified from suing alone..
4. Of the persons against whom a suit may be instituted.
5. Of parties to a suit.
6. Of the bill.
7. Process by service of a copy of the bill.
8. Of process to compel appearance.
9. Of process in default of answer.
10. Of taking bill pro confesso.
11. Of the defence of a suit.
12. Of appearance.
13. Demurrer.
14. Pleas.
15. Of disclaimers.
16. Of answer.
17. Of the joinder of several defences.
18. Of motions to dismiss.
19. Of replication.
20. Of evidence. Part 1st, Of the matters to be proved. Part 2nd, Of documentary evidence. Part 3rd, Of oral testimony.
21. Of setting down the cause for hearing.
22. Of the subpoena to hear judgment.
23. Of hearing causes.
24. Of decrees.
25. Of proceedings under decrees and orders.
26. Of further directions.
27. Of costs.
28. Of rehearing and appeals.
29. Of supplement and revivor.

30. Of affidavits.
31. Of interlocutory applications.
32. Of injunctions.
33. Of writs and orders in the nature of injunctions.
34. Of the writ of *ne exeat regno*.
35. Of receivers.
36. Of the payment of money and transfer of stock into court.
37. Of the payment of money or transfer of stock out of court.
38. Of the production of documents.
39. Of petitions for the appointment of guardians and orders for maintenance.
40. The statutory jurisdiction of the court.

As an example of the work, we shall extract a section from the chapter on costs, in which the *principles of taxation* are clearly and concisely stated. This is a subject of general interest to all practitioners, as well on account of their clients as themselves.

I. The different principles of taxation as between *party and party* are thus set forth:—

"That the Court of Chancery makes a distinction, which does not exist at law, with regard to the principle upon which the Master is to proceed in the taxation of costs, and that this distinction is marked by the term of costs '*as between party and party*,' and costs '*as between solicitor and client*,'<sup>b</sup> the court in the latter case permitting a larger proportion of expenditure to parties holding particular characters, or placed in particular situations, than in others.

"With respect to the extent of the difference between the costs allowed upon one principle of taxation, and those allowed upon the other, however important in its consequences, it is not

<sup>b</sup> There is also another species of costs which is sometimes mentioned in the books, *viz.*, costs '*out of purse*,' or '*out of pocket*,' vide *Aubrey v. Aspinall*, Jac. 441; *Ex parte Simpson*, 15 Ves. 476.

It does not distinctly appear in the books what particulars these costs comprehend, but it is presumed that they are confined, as their name imports, to those costs which the party who is to receive them has actually paid out of his *pocket or purse*. Mr. Beames, however, appears to think that they are considered as larger costs; vide *Beames on Costs* (ed. 1840,) p. 144, n. (b). There is also another species of costs, the mention of which frequently occurs, *viz.*, '*fixed costs*,' which term is merely made use of in contradistinction to *saved costs*, (*i. e.*, those costs which are the subject of taxation,) in cases where the court, instead of referring to the Master to tax the costs, at once names a specified sum to be paid by the party, as in the case of costs of the day, which, instead of being taxed, are now fixed at 10*l.*, unless the court make order to the contrary.

one respecting which any definite rules can be laid down: as far as they can be stated, however, they are clearly expressed by Mr. Sidney Smith, whose experience as an officer of the court stamps what he states upon this subject with authority of no inconsiderable weight.<sup>c</sup>

"According to that gentleman's statement, the principle in a taxation as between party and party, is to have a fixed allowance for every proceeding in a suit, which is not varied to meet the circumstances of any particular case. Thus the 13*s.* 4*d.* which is allowed as instructions for a bill, covers, in *every case*, all the trouble which a solicitor has in getting together the materials for the suit. It is also a principle to allow or disallow the costs of any proceeding entirely with reference to the result, without regard to the reason upon which such a proceeding was undertaken. Thus the costs of making or opposing a motion or petition (in the absence of any special direction to the contrary) are allowed or disallowed, in the general costs of the suit, entirely with reference to the success of the motion or opposition.<sup>d</sup>

"In costs, as between solicitor and client, the principle is to allow the party as many of the charges which he would have been compelled to pay his own solicitor, as fair justice to the other party will permit."

The following are the distinctions where costs are paid out of a general fund, or out of the fund of the party:—

"It must not, however, be supposed that, in such a taxation, where the costs are to come out of the pocket of the opposite party, the party, whose costs are to be taxed, is to be allowed everything which his own solicitor might claim against him upon the taxation of his bill. 'At first sight,' observes Mr. Smith, 'a party who is to have his costs as between solicitor and client, seems to be entitled to everything that can be claimed against him by his own solicitor; but in the details of taxation, there are many charges which are proper against the client, which it would be improper to fix upon a third party. To make one among many instances—where a defendant, by his own delay, suffers himself to be put into contempt, it is quite fair that he should bear the expense of his own neglect, but it would be very hard to take those costs out of a fund in which any other person is interested.'<sup>e</sup> In taxing costs, therefore, as between solicitor and client, two distinct principles are adopted, one where the costs are to be paid out of a general fund, the other where they are to be paid out of the fund of the party himself. This distinction, however, is never made in the order directing the taxation, but only when the order is acted upon; and, if it is intended that the party, whose costs are to be paid out of a general fund, should be fully indemnified against all expenses, care must be taken to have it so expressed in the order, as it will not be sufficient

<sup>c</sup> 2 Smith, 462, 3rd ed.

<sup>d</sup> Smith, 462, 3rd ed.

*Ibid.*

that the costs are directed to be taxed as between solicitor and client."

The effect of the Orders of May, 1845, in regard to taxation between party and party is then stated.

"According to the 120th Order of May, 1845, 'Where costs are to be taxed, as between party and party, the taxing Master may allow to the party entitled to receive such costs all such just and reasonable expenses as appear to have been properly incurred in:—

"The service and execution of writs, and the service of orders, notices, petitions, and warrants;

"Advising with counsel on the pleadings, evidence, and other proceedings in the cause;

"Procuring counsel to settle and sign pleadings, and such petitions as may appear to have been proper to be settled by counsel;

"Procuring consultations of counsel;

"Procuring the attendance of counsel in the Master's offices upon questions relating to pleadings or title;

"Procuring evidence by deposition or affidavit and the attendance of witnesses; and,

"Supplying counsel with copies of extracts from necessary documents."

"But in allowing such costs, the taxing Master is not to allow to such party any costs which do not appear to have been necessary or proper for the attainment of justice, or for defending his rights, or which appear to have been incurred through over caution, negligence, or mistake, or merely at the desire of the party."

"The 121st of the same Orders directs, 'that the costs of such copies of pleadings and proceedings as have heretofore been allowed in the taxation of costs between party and party, in country causes, are hereafter to be allowed in the taxation of costs between party and party in town causes.'

"The above orders and observations will suffice to convey a general outline of the distinction between costs as between party and party and as between solicitor and client; we will now proceed to inquire in what cases the court will direct the costs of a suit to be taxed upon either principle, or rather in what cases the court will direct the costs of a party to be taxed as between solicitor and client, the general rule of the court being, that all costs are to be taxed as between party and party, except where they are specially directed to be taxed as between solicitor and client, from which the corollary follows, that, where the Master is simply ordered to tax the party the costs of the suit, it is always construed to mean "as between party and party."

"It may be mentioned in this place, that, where the court has once adopted the principle of taxation as between solicitor and client in favour of a particular individual, or of a particular class, it will, in its future proceedings, wherever it becomes necessary to direct a further taxation of costs, direct them to be made

upon the footing of the former taxation; thus, if, upon the original hearing, the costs of a party have been ordered to be taxed as between solicitor and client, it will, at the hearing upon further directions, direct the subsequent costs of the same party to be taxed in the same manner, even though a different state of circumstances should appear from the Master's report from that which was supposed to exist at the original hearing. It is to be recollected, however, that it is only where the former direction for taxation has been made at a hearing of the cause, either original or upon further directions, that the court will consider itself bound by it, at the subsequent hearing, and that it will not do so where the former direction as to costs has been made upon petition and by consent."

II. Then come the cases relating to the allowance of costs as between *solicitor and client*. Thus as to trustees:—

"It appears to be the general rule of the court, that, when personal representatives and other trustees are entitled to costs '*out of the fund*,' such costs will be directed to be taxed as between solicitor and client. It is, however, in general, only in cases in which there is a fund under the control of the court, that such a direction will be given; where there is no such fund, or a bill against the trustee is dismissed, the costs awarded to the trustee will be only the ordinary costs."

"Thus, where a testamentary paper was held void for uncertainty, and the bill was dismissed with costs, it was suggested that some of the defendants, being trustees, should receive their costs, as between solicitor and client, but the court on the ground that they were trustees of a nullity, and that there was no fund out of which such costs could come, refused to allow them their costs as between solicitor and client, and dismissed the bill, therefore, with costs as between party and party."

"So a person who was named in a deed as a trustee, but had not executed the deed, or in any manner accepted the trust, and who, by his answer, had altogether declined it, upon the bill being dismissed against him, was held not to be entitled to have it dismissed with costs, as between solicitor and client, but only with the ordinary costs between party and party."

So in the case of charities:—

<sup>1</sup> *Edenborough v. The Archbishop of Canterbury*, 2 Russ. 93. In this case, however, the court gave costs, as between solicitor and client; the Archbishop and Bishop of London, who had been made parties to the suit for the purpose of restraining the induction of an incumbent to a living, or from availing themselves of any lapse which might occur pending the suit; this it did on the authority of *Townshend v. The Bishop of Norwich*, which occurred in 1824.

<sup>2</sup> *Mohun v. Mohun*, 1 Swanst. 201.

<sup>3</sup> *Norway v. Norway*, 2 M. & K. 278; overruling *Sherratt v. Bentley*, 1 R. & M. 655.



"Where an heir at law was made a defendant, pursuant to an order of the court, he was allowed his costs as between solicitor and client, although there was no resulting trust in his favour;" and it seems that, in general, in charity cases, the heir will, if he makes no improper point, be awarded his costs as between solicitor and client. This rule was acted upon in *Currie v. Pye*,<sup>a</sup> and in *Moggridge v. Thackwell*,<sup>b</sup> in which case the heir at law, as well as the Attorney-General and all the other parties, were allowed their costs out of the fund, to be taxed upon the same principle.

"It seems also, that in general, where the object of a suit is to establish a charity, and the estate is ample, the costs of all parties, out of the fund, will be taxed as between solicitor and client;" and, in *Attorney-General v. Carte*, where the decree had merely ordered that the parties should be paid their costs to be taxed by the Master out of the estate, without giving any direction as to the principle of taxation, in consequence of which the Master refused to tax the costs otherwise than as between party and party, the court entertained a petition for an order that the taxation of the costs should be as between solicitor and client."

*Secus* in ordinary suits amongst relations:—

"Upon the first hearing of *Moggridge v. Thackwell*,<sup>c</sup> Lord Thurlow gave all the parties their costs out of the estate, as between solicitor and client, on the ground that it was a cause between relations; but Lord Eldon, when it came before him, upon a rehearing, although he made a similar order as to the costs, did so, as well upon the ground that Lord Loughborough had intimated an opinion that the cause ought to be reheard, as upon the circumstances of the case; but it is to be observed that it is by no means the rule, that, in suits amongst relatives as to the distribution of a fund, the costs of all parties are to be paid out of the fund, as between solicitor and client; and that, in a suit by some of the next of kin of an intestate, against the administrator and others of the next of kin, for an account and distribution of the intestate's estate, the administrator is the only party entitled to have his costs taxed as between solicitor and client, and the plaintiff and the other next of kin will not have more than the ordinary costs." So also, where a bill is filed by one of two residuary legatees for the administration of the estate,

the other residuary legatee being a defendant, the usual decree was made; and upon the question being raised, at the hearing on further directions, whether the costs of the plaintiff and defendant should be paid out of the fund, as between solicitor and client, the Vice-Chancellor, after an inquiry into the practice, stated that he could not give the costs out of the fund in court, as between solicitor and client, without the consent of the defendant."<sup>d</sup>

Again, in creditors' suits:—

"Where a bill has been filed for the general benefit of creditors and legatees, and the estate has proved insufficient, the court has been in the habit, of late years, of giving the plaintiff his costs of the suit out of the fund realised by his exertions as between solicitor and client. This rule was adopted by Lord Lyndhurst, in *Turner v. Turner*,<sup>e</sup> and has been sanctioned by Lord Brougham,<sup>f</sup> by Lord Cottenham, when Master of the Rolls,<sup>g</sup> and by the V. C. of England;<sup>h</sup> and it equally applies where the bill has been filed by a simple contract creditor, and the specialty creditors have proved debts to an amount exceeding the value of the assets received."

Where the fund is insufficient:—

"But it is only where the fund is insufficient, that the plaintiff, in a suit of this description, will be entitled to have his costs taxed in so favourable a manner; where the fund is sufficient to pay all the debts, and to leave a surplus for the residuary legatee, the plaintiff will only have his costs as between party and party. In a recent case,<sup>i</sup> however, where, in a creditor's suit, a fund had been realized by the diligence of the plaintiff, and the assets were more than sufficient for the payments of the debts, Lord Langdale, M. R., considering it a hardship that creditors not parties to the suit should come in and reap the benefit of it, without contributing to the plaintiff's extra costs, made an order, by which it was directed that the plaintiff's costs, as between party and party, should be paid out

<sup>a</sup> *Fenner v. Taylor*, 5 Mad. 470; Mad. & Geld. 3, S. C.

<sup>b</sup> Cited 2 R. & M. 687.

<sup>c</sup> *Hood v. Wilson*, ib.; overruling *Young v. Everest*, 1 R. & M. 426; and *Rowlands v. Tucker*, ib. 635.

<sup>d</sup> *Jarkins v. Paxton*, 2 M. & K. 32.

<sup>e</sup> *Tootal v. Spicer*, 4 Sim. 510.; and see *Sutton v. Doggett*, 3 Beav. 9.

<sup>f</sup> *Barker v. Wardle*, 2 M. & K. 818.

<sup>g</sup> *Brodie v. Bolton*, 3 M. & K. 168.

It may be remarked here, that where a creditor files a bill on behalf of himself, &c., the defendant may apply to the court, by motion, at any time before the decree, on payment to the plaintiff of his demand and costs, and that, in such case, the plaintiff's costs will only be taxed as between party and party; *Pemberton v. Topham*, 1 Beavan, 316. If there are any other defendants to the suit, their costs must also be paid; ib.

<sup>m</sup> *Attorney-General v. Haberdashers' Company*, 4 Bro. C. C. 178; Vide etiam, *Attorney-General v. Tonna*, Belt's note to ib.; and Beames on Costs, Appx. 18.

<sup>n</sup> 17 Ves. 462.

<sup>o</sup> 1 Ves. J. 454; 7 Ves. 36, 68.

<sup>p</sup> Ibid.; and vide *Attorney-General v. Carte*, Beames on Costs, Appx. 2; 1 Dick. 113, S. C.; and *Bishop of Hereford v. Adams*, 7 Ves. 324; *Osborne v. Denne*, ib. 424. <sup>q</sup> 1 Ves. J. 475.

<sup>r</sup> *Trezevant v. Fraser*, Rolls, Aug. 1839.

of the fund, and that his extra costs should be paid *pro rata*, by all the creditors who partook of the benefit of the suit.<sup>a</sup>

"It may be mentioned here, that where, in a creditor's suit, the costs of all parties had, upon further directions, been ordered to be taxed as between solicitor and client, and paid out of the fund, and upon taxation the fund proved insufficient to pay all the costs, the V. C. of England, upon a petition by the heir and administrator of the debtor, praying that their costs might be paid in the first instance, refused to vary the order, which had been made upon further directions, but directed the fund to be divided amongst all parties, in proportion to their costs."<sup>b</sup>

## LEGAL EDUCATION.

LEGAL education is now attracting much attention. A select committee of the House of Commons has been appointed, with the assent of government, on the motion of Mr. Wyse. It has already commenced its inquiries. Mr. Starkie and others have been examined.

It may be interesting to see what has been done on this subject even in Russia.

We select the following from Part 2 of Papers of Dublin Law Institute, published in December, 1845.

THE imperial law school of St. Petersburg was established in the year 1835, by an organic statute (*ustaph*) officially promulgated. The first idea of this institution is due to the Prince d'Oldenburg, the head of the department of justice in the council of the empire, and a senator and lieutenant-general of the army. The prince has devoted to this object one million of roubles. The organic statute appoints the founder the curator of the new school, which is of so high importance for Russia; and this choice, which satisfies all the conditions requisite to accomplish the object of an establishment destined to exert a powerful influence over the destinies of a vast empire, is at the same time a pledge of its prosperity and an element of success. The purpose of the institution of the imperial law school is, to form, for the whole extent of the empire, jurisconsults, and especially magistrates, versed in the knowledge of law and formed to the practice of jurisprudence. Hitherto, the Russian jurisconsults, with some rare exceptions, have been formed by practice alone; and, in regard to their knowledge, limited almost exclusively to the forms of jurisprudence, they might be compared with the *Pragmatikoi* of ancient Greece. The law school is destined to fill the ranks of the magistracy and of the jurisconsults with men penetrated by the spirit, the science, and the sanctity of their mission. It is this consideration of prac-

tical interest which has caused the school of law to be placed within the attributions of the ministry of justice. The studies of pupils, however, are in a more special manner to be directed to a knowledge of the functions of the senate, which is the most eminent and most important judiciary body of the empire. This consideration, added to that of the division of casts recognised by the constitution of the empire, explains the disposition of the statute, which declares those young men only to be admissible to the school of law, who belong to the Russian nobility.

The following is a succinct account in detail of the internal organization of this scientific establishment.

The pupils are either supported at the expense of the government, (*boursiers de la couronne*;) or at their own expense (*pensionnaires*;) and both classes are lodged in the school, in order that their education and their conduct, as well as their instructions, may be subjected to the proper superintendence and direction. The school is a true judicial seminary; but no other establishment in the universe can be compared with it, in point of magnificence and sumptuousness. The school has its church, its ministers of religion, its physicians, its police, its regents for each class, its chancery; in one word, all the *personnel* necessary to a complete administration. All the persons employed in the institution are under the orders of the director, who is a counsellor of state in ordinary service, M. de Poschmann. The special direction of the scientific department is confided to an inspector, the Baron de Wrangell, who is also a counsellor of state.

The pupils of the school of law are to receive all the principles of the intellectual and moral instructions, as much as possible, within the school; for the principal object of the establishment is to obtain a perfect unity of views and tendencies; and this end would be impossible, if the divers influences, which must become deeply rooted in the mind of young persons of a certain age, by a residence in a great city like St. Petersburg, were allowed to subsist. It is therefore established as a principle, that none but young men of such an age, as gives the assurance of an entire purity of manners, and of an entire facility in yielding themselves to the doctrines taught, can be admitted to the imperial school. The age of admission is fixed at twelve years. The conditions of intellectual aptitude consist in an acquaintance with the Latin language, and with the most important modern languages, (as the French and German,) with history, geography, and mathematics.

The pupils of the school (the number of which is fixed at one hundred and fifty) are distributed into six classes, besides a preparatory class, destined to those of the newly admitted pupils who, though they give the best proofs of capacity, are notwithstanding deficient in some of the prescribed branches of study.

The duration of the course of each class is fixed at one year; so that the complete course of studies lasts six years. The pupils who an-

<sup>a</sup> *Stanton v. Hatfield*, 1 Keen, 358. See *Gawnt v. Taylor*, 2 Hare, 420.

<sup>b</sup> *Swale v. Milner*, 6 Sim. 572.

nually leave the school, after having terminated their course, perform a noviciate of at least six years in judicial practice.

In the preparatory class are taught the Russian, Latin, German, and French languages, history, geography, and mathematics. The religious instructions, and the schools of music, of design, and of calligraphy, are frequented by all the classes.

In the sixth class, the studies commenced in the preliminary class are continued in a more thorough manner, with the addition also of the Greek language.

In the fifth class, besides these different branches of study, the English language, the physical sciences, and natural history, are taught.

A knowledge of all these modern languages is generally acknowledged as necessary to complete the education of a finished juriconsult; but it is especially indispensable in Russia, where the habits of the higher classes of society have in some sort naturalized all the languages of the globe.

In the fourth class, the study of philosophy and statistics is commenced.

When the school was first established, it was found impossible to organize any more than these four inferior classes, devoted to the preliminary studies; with the third class alone, the study of law was to commence.

But the Prince d'Oldenburgh desired much to see the pupils of the fourth class initiated in the studies destined to form the object of their career; and, by his express order, a course of introduction to the study of law was given by the writer of this notice, who was invested with the professorship of the encyclopædia of law. The text of his lectures will be published forthwith.

With this year, therefore, the pupils began to be familiarized with the sources of the Roman law, and Mr. Schneider, counsellor of state, charged with the department of Roman law, explained to them the Institutes of Justinian.

In the third class, the pupils continue the study of foreign languages, history, geography, mathematics, philosophy, and statistics; but they, at the same time, attend a course of the encyclopædia of law, a course of Roman law, of the history of the Russian law, and a course of political economy. As to the course of religious instruction and the fine arts, it has already been remarked, that they are frequented by all the classes of the law school.

In the two last classes, the philosophical studies are pursued, but the time devoted to them is naturally more limited; and historical studies are particularly attended to.

In regard to the special studies of law, instruction is given, in the second class, in the Roman law, and in the following designated parts of the national law, namely:—1, constitutional law, and the law of casts; 2, administrative law (central and provincial authorities); 3, civil law; 4, criminal law. In this class, also, the exercises of practical jurisprudence are commenced.

In the last class, finally, the pupils receive instruction in the law of seigniorial jurisdictions, in procedure, in legal medicine; financial law, the law of police, administrative law, the provincial laws of countries incorporated with Russia, (for example, the German law,) and, lastly, in mathematics applied to law. The principal object of the labours of this last class is judicial practice; for the young men of this class are to enter immediately upon the exercise of judiciary functions.

The plan of the imperial school is perfectly adapted to the wants of Russia; but it is not definitively settled, so far at least as to preclude the introduction of such changes, as experience may show to be useful.

The imperial school, we think, will soon create for itself relations of scientific commerce with learned Europe, and will form a sort of juridical academy, which will receive with zeal the labours submitted to it by foreign juriconsults.

## SELECTIONS FROM CORRESPONDENCE.

### LAND-OWNER'S REMEDY AGAINST RAILWAY COMPANY.

*To the Editor of the Legal Observer.*

SIR—I am the incumbent of a small living under sequestration for debt.

Since the sequestration was issued, I received the usual notice from a railway company of the intention of making their railway across part of the land attached to my living, and requesting my assent or dissent.

Since the passing of the act, the company have entered upon my land, and are now excavating the soil without the slightest communication with me, as to compensation. I am too poor to take an opinion in the regular way. Will one of your readers kindly inform me what remedy I have in this case? It will be recollected that the sequestrator is only authorized to receive the usual emoluments of the benefice till his claim is paid; he can have no authority to dispose of the freehold vested in me and my successors. I am not aware that he has done anything herein.

PRESBYTER EGENS.

### RENT OF SMALL TENEMENTS.—7 & 8 VICT. c. 96, s. 67.

SIR.—Allow me to point out an apparent inaccuracy in the wording of the 7 & 8 Vict. c. 96, (the Act to amend the Law of Insolvency, Bankruptcy and Execution).

By the 67th clause it is enacted, that the landlord of a tenement let at a weekly rent, shall claim, under an execution, not more than four weeks' arrears of rent; and if the tenement be let for any other term less than a year, the landlord shall only claim during four such terms or times of payment.

It would therefore appear that for a tenement

let by the half year, the landlord might claim under an execution four half years' arrears. This is an anomaly, and it is a pity that greater care is not bestowed upon the wording of acts of parliament than to permit such inaccuracies to appear in our statute books.

In a case before me I have advised, that only one year's arrears can be claimed by the half yearly landlord, on the following grounds:—The clause is prohibitory, and does not create any new rights, but merely restrains the exercise of such as were pre-existing, and the half yearly landlord cannot therefore claim a right which did not exist before the act was passed.

If, however, any of your subscribers should be of a contrary opinion, I should be glad to be favoured with his views upon the subject.

X. Y.

### UNQUALIFIED PRACTITIONERS IN POOR LAW MATTERS.

THE Poor Removal Bill will be further proceeded with next week, and we recommend the vestry clerks who are solicitors, and other members of the profession interested in the subject, to see that the 15th clause relating to the appointment of a paid officer for conducting the poor removals be properly amended, as we suggested, by restricting such proceedings to petty sessions, and providing against their extension to the quarter or general sessions.

We have deferred giving a report of the decision on the demurrer in the case of *The Queen v. Buchanan*, and wait for the further hearing when the defendant is brought up for judgment.

### BANKRUPTCY REFORM.

AN able pamphlet has just been published by Sir George Rose,\* which is well entitled to the most serious attention. The opinions of this learned judge in bankruptcy will doubtless be well considered in connexion with the bill now before parliament. Sir George is strongly opposed to the alterations which tend still farther to bring cases of petty insolvency before the same tribunal as our "Royal Merchants."

We are precluded by our arrangements for the present number, to do more than recommend the publication to our readers. We hope next week to discuss the merits of the pamphlet.

\* Remarks upon the Progress and Present State of the Law of Commercial Bankruptcy, with a few suggestions for its improvement. By Sir George Rose, Judge in Bankruptcy. Stevens and Norton, 1846. Pp. 24.

### TRINITY TERM EXAMINATION.

ACCORDING to the printed list for this term there are 152 candidates for admission on the Roll of Attornies, and four more have applied for examination without giving notices of admission. Upwards of fifty in the list have been already examined, and deducting the usual proportion of absentees, the number will probably be about ninety.

### CHIEF CLERK TO CHANCERY MASTER.

#### IN RE WHITING.

THE Master of the Rolls gave judgment in this matter on the 28th instant, in which the Lord Chancellor concurred: holding, that Master Lynch had been irregular in deputing the business of the chief clerk to the junior or copying clerk. No order will be made at present; as an intimation of their Lordship's opinion to the Master will prevent a recurrence of the irregularity.

### APPLICATIONS FOR RENEWAL OF CERTIFICATES.

On the Last Day of Trinity Term, 1846.

#### Queen's Bench.

1. Andrew, William, 41, Moorgate Street.
2. Bassett, Thomas Prichard, formerly Thomas Prichard Popkin, 20, Pierpont Row, Islington; Nelson Square; and Brussels.
3. Bent, Edward Stanley, Salford, Manchester.
4. Beaumont, Bradeley, 4, North Place, Commercial Road, Peckham.
5. Davis, Isaac, 24, St. James's Square.
6. Florence, James, 18, Charing Cross; and Paris.
7. Houseman, William, Queen's Square, Bloomsbury.
8. Hardy, Edward Webb, 219, High Holborn; Washington Cottage, Camberwell; Wollington Place, Lambeth.
9. Hull, Warner, Uxbridge.
10. Powell, Horatio Nelson, Cheltenham.
11. Poole, David; 21, Trevor Square, Brompton; High Seas; Hobart Town.
12. Pitman, Thomas, Charlotte Street, Portland Place.
13. Pedder, James, Liverpool.
14. Stanley, John, 3, Westmoreland Place, City Road; Newport; Salop.
15. Smith, Edward George, Merthyr Tydvil.
16. Short, Charles Samuel, Azar Cottage, Clapham Road; Charrington Street, St. Pancras; Ebury Street, Pimlico.
17. Vawdry, William David, 5, Vernon Place, Bagnigge Wells Road.
18. Warren, Daniel, 32, Park Street, Dorset Square; Great Russell Street, Covent Garden; Tor Mahon, Highwicke; and York Street, Covent Garden.

**CANDIDATES WHO PASSED THE EXAMINATION.****EASTER TERM, 1846.**

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &amp;c.</i>
Batt, Henry . . . .	John Coles Fourdrinier, then of Dyers' Hall, now of 1, Scott's Yard, Bush Lane—Beaumont Charles Luttley, Dyers' Hall, and Wandsworth
Birch, Henry . . . .	Isaac Last, Hadleigh, Suffolk
Bouts, Charles . . . .	Frederick Bowker, Winchester
Bowen, Charles Burrin . . . .	Robert Stephens, Plymouth
Bramall, Henry James Marmion	Thomas Brook Bridges Stevens, Tamworth
Bramwell, Thomas Vicars . . . .	William Woollam, Stockport
Branson, Thomas Sands . . . .	Thomas Branson, Sheffield
Burgess, John . . . .	William Hannen, Shaftesbury
Carr, William . . . .	John Hartley, Settle — George Dudgeon, now George Hartley
Channing, Henry . . . .	Robert Uttermare Bullen, Taunton—George Mathias, Taunton
Chapman, Frederick . . . .	James Johnston, 100, Chancery Lane — Charles Henry Rhodes, 63, Chancery Lane
Chilwell, George . . . .	Charles Handley, Norwich
Church, Henry Francis . . . .	John Thomas Church, 9, Bedford Row
Clarke, William . . . .	Thomas Tilson, 29, Coleman Street
Cockle, Henry . . . .	John Sandom, Deptford—William Sandom, Deptford
Coode, Edward, jun. . . .	Edward Coode, St. Austell
Cowdry, Nathaniel . . . .	Charles Bayly, Frome, Selwood, Somerset—Charles Clarke, 20, Lincoln's Inn Fields
Crammond, David William . . . .	Thomas Warry, New Inn—George Warry, New Inn
Cross, Thomas Plomer Lewis . . . .	William Henry Cross, Surrey Street, Strand
Dacie, William . . . .	William Scudamore Dacie, Throgmorton Street—Sir G. Stephen, Furnival's Inn
Dawbarn, Robert, jun. . . .	Edward Jackson, Wisbeach, St. Peter, Isle of Ely, Cambridge
Deane, Edward Howard . . . .	Edward Guy Deane, Liverpool
Dendy, Samuel Frederick . . . .	Samuel Dendy, 3, Bream's Buildings, Chancery Lane
Dodd, Henry . . . .	Richard Gibson, Hexham
Dry, James . . . .	Robert Fuller Graham, Newbury, Berks
England, Charles . . . .	Charles Metcalfe, jun., Wisbeach St. Peter's, Cambridge
Earn, William . . . .	William Wake, Sheffield
Faithfull, Edward Williams . . . .	Edward Chamberlain Faithfull, Winchester
Falkner, John Stringer . . . .	Francis Falkner, Bath
Fellows, Henry Butler . . . .	John William Wall, Devizes — Edward Francis Fennell, 32, Bedford Row
Finnis, Robert . . . .	James Robinson, Southampton Buildings—Robert Fitz Finnis, late of 21, Hart Street, Bloomsbury, deceased, and assigned to Charles Gaines, 1, Caroline Street, Bedford Square
Fleetwood, Thomas Perrior . . . .	Henry Everett, Salisbury — George Barnard Townsend, Salisbury
Fox, Charles James . . . .	Robert Sankey, Canterbury
Fraser, Edward John . . . .	Lawford Acland, (formerly of 7, Chancery Lane, now of Bombay)—Henry Charles Chilton, 7, Chancery Lane
Garteide, Benjamin . . . .	Edward Brown, Oldham—William Buckley, Ashton-under-Lyne
Gee, Robert . . . .	Cadwallader, Edwards Palmer, Barnstaple—Edward Shearm, Stratton, Cornwall
Gibson, Charles Reginald . . . .	John Widdows, 9, Copthall Court — John Robinson Gibson, 9, Copthall Court
Gidley, Robert Courtenay . . . .	John Honeywood Townsend, Honiton
Griffith, Thomas Aubrie . . . .	Edward Stephens, Llandaffe — Thomas Judkins Clarke, Bishopgate Church Yard
Grimley, Henry . . . .	Charles Warren, Market Drayton
Harris, Frederick . . . .	Henry Witton Tyndall, Birmingham
Heath, John Massey . . . .	George Vincent, (formerly of 9, King's Bench Walk, then of 1, Paper Buildings, and afterwards of 9, King's Bench Walk

Hichens, William, jun.	William Hichens, St. Ives
Hicks, Leonard Hopwood.	Leonard Hicks, Gray's Inn
Hodgson, George	Richard Jennings, Great Driffield.
Holmes, Rd., jun.	Richard Holmes, Arundel—Thomas Carington Campbell, 21, Essex Street
Jones, Thomas	John Jones, Chorley—Edward Dakin Stanton, Chorley
Jones, William Halse Gatty	William Jones, Crosby Square
Lawrence, George	Frederick John Reed, 59, Friday Street
Long, Walter Searley	Samuel Long, Portsea — Nicholas Gedye, 14, George Street, Mansion House
Maddock, Samuel Horace Clarke	Arthur John Knapp, Bristol
Manby, Edward, jun.	William Manby, Wolverhampton
Mason, Charles	Adlard Welby, Uttoreter
Miles, Thomas, jun.	Samuel Miles, (late of Leicester, deceased) — Roger Miles, Leicester
Moon, William	William Harris, 5, Stone Buildings, Lincoln's Inn
Morris, Price	Thomas Hughes, Astrad, Denbigh
Mote, Edward	David Williams Wire, St. Swithin's Lane
Newman, Samuel	Harvey Gem, Lincoln's Inn Fields
Peake, Frederick	Thomas Clarke, 43, Craven Street—Robert George Clarke
Peake, Henry	Goddard Jackson, Wisbech
Perham, John Isaac	Thomas Hamlin, Redhill, Wrrington
Phillips, John William	Thomas Gwynne, Haverfordwest
Phipps, Thomas	James Henry Frederick Lewis, 28, Essex Street, Strand
Pope, John Woodford	John Daw, Exeter
Powell, Edward Howell	Thomas Farmery, Ripon
Prance, Courtney Connell	Alfred Rooker, Plymouth
Quick, Henry Brannard	James Dyer, 27, Ely Place
Robinson, Thomas	Frederick Crabb, Rugeley
Rodgers, Henry	Thomas William Rodgers, Sheffield
Sharp, James	James Chaldecott Sharp, Southampton
Shepherd, Thomas Richard	John Ashton, Warrington
Sherring, Joseph Brodribb, jun.	Samuel Cary, Bristol
Shuttleworth, Samuel	Henry Seymour Westmacott, 28, John Street, Bedford Row
Smith, John Bridgeman	Henry Sewell Stokes, Truro
Smith, Ralph Blackelock	Albert Smith, Sheffield
Spickett, John	James Dolman, Clifford's Inn
Stedman, John	William Holmes, 25, Great James Street
Sworder, Thomas, jun.	Thomas Sworder, sen., Hertford—George Debenham, Salters' Hall, St. Swithin's Lane
Tomlin, James Robinson	Ottiwell Tomlin, Richmond—James Williamson, 4, Verulam Buildings
Turner, John	Richard Bushon Preston—Joseph Parkes, 21, Great George Street, Westminster
Uthoff, Edward	Robert Bartlett, Chelmsford
Watson, George Steward	Joseph Heapy Watson, 73, Basinghall Street
Weigall, John Charles Edwards	Thomas Henry Dixon, 5, New Boswell Court
Wenden, George	Richard Tabram, Cambridge—John Visard, Dursley
Weymouth, Thomas Wyse	Isaac Weymouth, Kingsbridge
Wheat, John James	John Wheat, Sheffield
Wilde, John Thomas	James Thomas Woodhouse, Leominster
Wilkin, Charles	James Wilkin, 217, Piccadilly
Wilkinson, Samuel, jun.	John Foster, Walsall
Wilson, Benjamin	William Plater Bartlett, Nicholas Lane
Wilson, James, jun.	Joseph Mallaby, Liverpool
Wilson, William Wilfred	William Beamont, Warrington
Wright, John Kyme	John Wright, 7, Rathbone Place, Oxford Street.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Vice-Chancellor of England.

PARTIES.—MARRIED WOMEN.

*After a contract for sale of an estate, the*

*wife of the vendor obtained possession of several of the deeds relating to the title, which she refused to part with, on the ground that she had some claim upon the property, in consequence of which, as was alleged, the purchase could not be completed. Held, that she was improperly made a party to a bill for specific performance.*

THIS was a demurrer filed by the defend-

ant, Harriet Bradshaw, to a bill for the specific performance of a contract entered into by her husband for the sale of certain limekilns at Lewisham. The bill stated that in pursuance of the contract, an abstract had been delivered which had been examined with the deeds, but that subsequently to such examination, the wife had obtained possession of several of the title deeds, which she refused to deliver up, alleging that she had some claim upon the property; and the bill charged that the defendant, the wife, claimed to be entitled to some charge upon, or interest in, the estate for her separate use, and to hold the deeds in right of such charge or interest. The bill also charged that such alleged charge and interest, if any, was created by her husband subsequently to, and with full knowledge by the defendant, Harriet Bradshaw, of the contract with the plaintiff, and in order, if possible, to defeat such contract; but, that if it should appear that she was entitled to have a sum for her separate use raised out of the estate, then that a sufficient part of the purchase ought to be applied in payment of such sum. And it prayed that the defendants might answer the bill, and, if necessary, they might be ordered to answer the same separate and apart from each other; and that the defendant, the husband, might be decreed specifically to perform the agreement, &c., to do all necessary acts for the purpose, and especially to deliver up, or cause to be delivered up, by the other defendant, or any other person in whose possession the same might be, the deeds so alleged to be taken possession of by her, and all other deeds relating to the property; and that it might be declared that the alleged claim of the defendant, Harriet Bradshaw, was subject to the plaintiff's contract, and that her alleged claim did not entitle her to retain the deeds taken possession of by her, and that she might be decreed to deliver them up to the plaintiff, and to release the estate from all claim. The demurrer was for want of equity.

Mr. Stuart and Mr. Steere for the demurrer.

Mr. Bethell and Mr. Toller contra.

The Vice-Chancellor said he thought, if the bill had stated distinctly that the husband was about to make some conveyance of the property for the benefit of his wife which would have the effect of preventing him from performing his contract with the purchaser, that might be a reason for filing a bill against the wife to restrain her from taking such conveyance. In that case, both might be made parties. But his honour said he did not think enough was stated on this bill for the court to grant an injunction. It appeared there was some practical difficulty, in consequence of the wife having got possession of the title deeds; but the court had nothing to do with such disputes; and when the decree was made in the cause for specific performance against the husband, and he was compelled to deliver up the deeds, the wife would, perhaps, when he was in prison, deem it right to deliver up those now retained by her.

It appeared that the wife did not claim any actual interest in the property, and the plaintiff did not state with sufficient definiteness what interest the wife had; but she took upon herself, without having any interest, to hold the title deeds in a manner not creditable, in the hope of getting some part of the purchase money. The demurrer must therefore be allowed.

*Muston v. Bradshaw.* April 28th, 1846.

Queen's Bench.

(Before the Four Judges.)

PRACTICE.—AFFIDAVIT.—JURAT.

*The jurat of an affidavit sworn before a commissioner in the country, on which a certiorari to bring up an order of sessions was granted, omitted the words "before me." Held that the defect was fatal to the affidavit.*

*Semble, that where an affidavit is sworn before a judge at chambers, the ordinary form of the jurat, "sworn by the above-named defendant, &c. at my chambers, Rolls Gardens, Chancery Lane, this 19th day of November, 1844.—E. H. Alderson," is sufficient.*

On the 4th of April, 1844, a writ of certiorari had been obtained to bring up an order of sessions, a case having been reserved for the opinion of this court. The affidavit of notice to the magistrates to apply for the writ of certiorari was sworn before a commissioner in the country, and did not contain the statement that it was sworn before him, the words in the jurat "before me" were omitted.

A rule nisi had been obtained for quashing the writ.

Mr. Neale showed cause.

This case was moved on the authority of *Regina v. Bloxham*,<sup>a</sup> and the circumstances are the same in both cases, but the authority of that case has been shaken by a late case in the Exchequer, *Empey v. King*,<sup>b</sup> there an affidavit in support of a rule for an attachment was sworn before a judge at chambers, and the jurat was "sworn by the above-named defendant, &c., at my chambers, Rolls Gardens, Chancery Lane, this 19th day of November, 1844. E. H. Alderson." The case of *Regina v. Bloxham* was there expressly brought under the consideration of the court, and they held the affidavit to be sufficient, and said that it was consistent with the practice which universally prevailed. The omission of the words "before me" must either make the affidavit a nullity, or it can only amount to an irregularity. It is not a nullity, because the jurat is not a necessary part of an affidavit in support of an assignment of perjury, *Res v. Emden*,<sup>c</sup> and in *ex parte Smith*,<sup>d</sup> *Patterson, J.*, allowed a jurat to be amended. If the omis-

<sup>a</sup> 29 L. O. 209; 1 N. S. C. 370.

<sup>b</sup> 14 L. J. Excheq. 48.

<sup>c</sup> 9 East, 437.

<sup>d</sup> 2 Dowl. 607.

sion merely amounts to an irregularity, it is now too late to make the objection, because nearly two years have elapsed since the *certiorari* was granted.

Mr. *Phillimore*, *contra*, was not heard.

Lord Denman, C. J. I think the case of *Regina v. Bloxam*<sup>e</sup> was rightly decided; that case was very fully argued, and all the authorities on the subject were brought under the consideration of the court. It does not appear to me to be inconsistent with the case of *Empey v. King*, because there the Chief Baron appears to have said that the omission of the words "before me" might be a good objection where the affidavit is sworn before a commissioner in the country, but that the practice is different where it is sworn before a judge at chambers.

The affidavit does not in this case appear to have been sworn before any one. Time may operate as a waiver of an irregularity, but this is not a mere irregularity.

Mr. Justice Patteson. I think *Regina v. Bloxam* was rightly decided, and that there is no ground for us to overrule it. The Chief Baron seems to draw a distinction between an affidavit sworn before a judge at chambers and one sworn elsewhere.

Rule absolute.

*The Queen v. Norbury* Easter Term, 1846.

#### Queen's Bench Practice Court.

#### IRREGULARITY.—APPEAL FROM DECISION OF JUDGE AT CHAMBERS.

✕ If a summons to set aside proceedings for irregularity be dismissed by a judge at chambers, upon the ground that the application is too late, the court will not interfere.

*Lush*, on the 2nd of May, obtained a rule calling upon the plaintiff to show cause why the service of the writ of summons, the affidavit of such service, and the appearance entered by the plaintiff for the defendant, and all subsequent proceedings should not be set aside for irregularity. The affidavit in support of the rule stated, that the appearance was entered on the 2nd of March, and that on the 9th an application similar to the present was made by summons to *Cresswell, J.*, at chambers, but his lordship, thinking that the application was too late, dismissed it. It was submitted that the application was in time; *Newnham v. Hannay*, 5 Dowl. 259; *Cumming v. Elwin*, 5 Scott, 149; and that the court would therefore interfere.

*Corrie* now showed cause, contending that the judge at chambers having decided that the application was too late, the court would not review his decision. *Tadman v. Wood*, 4 A. & E. 1011.

*Lush. Tadman v. Lee* is distinguishable. There the judge decided that the application was in time, and made an order; whereas, in the present case he refused to entertain the application.

*Wightman, J.* We consider that making no

order is the same thing as making an order to that effect. The case cited is an express authority that when applications of this kind are made to a judge at chambers, any question as to whether they are made in time or not, is entirely within his discretion. That case, therefore, is directly in point.

Rule discharged with costs.

*Lane v. Newman.* Easter Term, 1846.

#### ARBITRATOR'S NOTES.

✕ The court will not look at the notes of an arbitrator, nor at a copy of them verified either by an affidavit of the arbitrator or his clerk.

A CAUSE and all matters in difference were referred to a barrister, and

*Addison*, upon showing cause against a rule to set aside the award, was about to read a copy of the arbitrator's notes, verified by his clerk; when

*Martin, Q. C.*, (*Row* was with him,) suggested that this was irregular. A copy of the notes clearly could not be evidence, and the reception of an arbitrator's notes in any shape would furnish a precedent which might lead to great inconvenience. In this particular instance there was no object whatever in excluding the notes, but it was thought right, on behalf of members of the bar, not to allow them to be received without observation.

*Coleridge, J.* A copy of the notes is certainly not evidence, and to receive them in this shape would break in upon the rule observed by gentlemen of the bar of refusing to make an affidavit with respect to what takes place upon arbitrations.

*Addison* then said that the learned arbitrator in the present instance was quite willing that the original notes should be produced, and that, if the court would receive them, they should be furnished.

His lordship, however, said that they ought not to be received.

*Doe d. Harby v. Preston and another.* Easter Term, 1846.

#### Common Pleas.

#### DISTRINGAS.—AFFIDAVIT FOR.

In support of an application for a *distringas*, it is not enough that the affidavit states inquiries and service to have been made at the place of business of the defendant, and that he cannot be found elsewhere, where the object is to compel an appearance; but for the purposes of outlawry such an affidavit is sufficient.

*Kinglelake*, Serjeant, applied in this case for a *distringas* against the defendant *Allen*. The affidavit on which he moved stated the several calls to have been made at the "warehouse and place of business" of the defendant where service of the writ was effected on a clerk who said that the defendant was in the country and his return uncertain. There was also a state-



ment that every attempt had been unsuccessfully made to find the defendant, or any place where he had resided. In support of the application, the cases of *Grindley v. Thorn*, 5 Dowl. 544, and *Nugee v. Swinford*, 9 Dowl. 1038, were referred to.

*Tindal*, C. J. Enough appears to entitle you to a distringas for the purposes of outlawry, for your affidavit states that the defendant cannot be found at all; but whether you are entitled to it for the purpose of compelling an appearance is another question. You may take the writ for the purposes of outlawry if you like.

Writ granted accordingly.

*Rock and others v. Allen and another.*  
Easter Term, 1846.

### Exchequer.

#### RAILWAY SCHEME.—FICTITIOUS SCRIP.

*The directors of a railway scheme having determined not to issue scrip, the projector of the scheme and the secretary, without the sanction of the directors, altered the form of the scrip certificate so as to make it issuable by the secretary alone. The defendant, who was a jobber, sold to the plaintiff some of the scrip, thus signed by the secretary, and the plaintiff afterwards finding it to be fictitious, brought an action to recover back the money paid. Held, that the proper question for the jury was, whether the plaintiff contracted to buy genuine scrip, or only such scrip of the company as was then in the market.*

THIS was an action of debt for money had and received to the plaintiff's use. The defendant pleaded that he was never indebted. At the trial before *Pollock*, C. B., at the sittings at Guildhall, it appeared that one *Curling* was the projector of a railway scheme called the Kentish Coast Railway, and that he procured certain persons to lend their names as directors, he undertaking to bear the preliminary expenses. There were numerous applications for shares, and about 18,000 were allotted; but the directors finding that only 600*l.* was paid into their banker's on account of deposits, determined not to issue scrip, thinking it would be wrong to throw the burden of the scheme on the few persons who paid the deposits. *Curling* was dissatisfied with the determination of the directors, and in conjunction with one *Richards*, whom he appointed secretary, but without any authority from the directors, got an engraver to alter the form of the scrip certificate, so as to make it issuable by the secretary alone. The scrip was accordingly issued, signed by *Richards* alone, and without the sanction or authority of the directors. The defendant was a jobber and dealer in shares, and on the 11th and 17th of April he sold to the plaintiff some of this scrip for the settling day on the 30th May. The scrip was at that time at a premium, but the scheme having been afterwards abandoned, the plaintiff brought the

present action to recover the money paid to the defendant for the purchase of the scrip, on the ground that as the scrip was fictitious there was a failure of consideration. It was objected on the part of the defendant, first, that as the scrip was sold in the ordinary course of dealing the defendant was not responsible inasmuch as he did not guarantee it to be genuine; secondly, that the signature of the secretary was binding on the directors, and therefore the scrip was valid. The learned judge told the jury that a jobber stood in the same situation as a merchant or any other person selling goods, and that if the scrip was fraudulent and fictitious, the plaintiff was entitled to recover. The jury found a verdict for the plaintiff, with 430*l.* damages.

*Martin* had obtained a rule calling on the plaintiff to show cause why a new trial should not be had on the ground of misdirection. He submitted that the learned judge should have left it to the jury to say whether the bargain of the plaintiff was for real scrip, or whether it was only for such scrip of the "Kentish Coast Railway," as was then in the market.

*Jervis*, J. *Chambers* and *H. Hill*, showed cause. The plaintiff is entitled to retain the verdict. He directs the defendant to buy "Kentish Coast scrip," but the defendant buys what turns out to be spurious. If a party contracted to purchase casks of brandy, and he finds on delivery that the casks are filled with water, he would be entitled to recover back the money paid. It is different from the purchase of a specific chattel, as for instance, a "smoke consuming furnace," which may be either a name or a description of the power of the machine. The case resembles that of a party buying forged exchequer bills, or where a person discounted forged navy bills. *Jones v. Ryder*, 5 Taunt. 486. At all events, a new trial ought not be granted without payment of costs, as the defendant's counsel did not request the judge to leave the point to the jury.

*Martin* and *Willes*, who appeared to support the rule, were not called upon.

*Alderson*, B. The question is simply this, what was it that the plaintiff contracted to purchase in his bargain for Kentish railway scrip? If he meant paper signed by the secretary, he has bought it. I agree that if the name of the secretary had been forged, the argument on behalf of the plaintiff would be well founded. But if the only genuine document was a document signed by the secretary, and the one party chose to buy, and another to sell it, the jury have not determined the point, and there should be a new trial.

*Rolfe*, B. I am of the same opinion.

*Platt*, B. I am of the same opinion.

*Pollock*, C. B. I agree with the rest of the court that there ought to be a new trial. I am not aware that the particular point has ever been fully discussed or determined. Numerous cases might be put in which the direction was general to purchase what was in the market, and a purchase of the particular scrip would satisfy the order. The question is extremely

important, and it is very desirable that it should be finally settled.

Rule absolute.

*Lamert v. Heath.* Trinity Term, 22nd May, 1846.

### Court of Bankruptcy.

DISPUTED ADJUDICATION UNDER 5 & 6 VICT., c. 122, s. 23.

*Semble, that a commissioner has no power to adjourn the hearing on a disputed adjudication beyond the five days allowed by the statute.*

A DUPLICATE of the adjudication, under a fiat in bankruptcy, issued against one Thomas Wright, having been served upon him, he appeared before Mr. Commissioner *Evans*, upon the fifth day after such service, to show cause against the validity of the adjudication, when it was held, that the act of bankruptcy on which the adjudication proceeded was insufficient.

Mr. *Turner*, as solicitor for the petitioning creditor, then stated that he could establish other acts of bankruptcy, but that the objection had come by surprise, and the necessary witnesses were not in attendance. He therefore prayed an adjournment to the following day, that he might produce witnesses to prove another act of bankruptcy, pursuant to the 5 & 6 Vict., c. 122, s. 23.

Mr. *Cooke*, on behalf of Mr. *Knight*, objected to any adjournment. Two days' notice had been given, pursuant to the rules of the commissioners, that it was intended to dispute the act of bankruptcy, and if a second act of bankruptcy was to be set up, the witnesses should be in attendance now to establish it.

Mr. Commissioner *Evans* would be disposed to grant the adjournment under the circumstances; but he doubted if he had any authority to do so. He had done so on one occasion by consent, but even then he doubted if he had not exceeded his power.

Mr. *Turner* submitted that the power of adjournment was necessary as a matter of convenience. If the examination proceeded until midnight, would not the commissioner have power to adjourn?

Mr. Commissioner *Evans* thought, it would be a different question if the examination upon a disputed adjudication were to extend beyond the usual hour to which the court sat. However, he should consult his brother commissioners on the point. The learned commissioner then retired, and upon his return, stated that there was some difference of opinion between the commissioners as to their power of adjourning a disputed adjudication at the instance of the parties. When the occasion arose, that the examination or arguments upon a disputed adjudication continued until twelve o'clock at night, it would be necessary to decide if the commissioners had authority to adjourn under such circumstances. He was now of opinion that he had no authority in the

present case to order any adjournment, and as the act of bankruptcy on which the original adjudication proceeded was insufficient, and no other act of bankruptcy was proved, the adjudication must be annulled.

*In re Thomas Knight.* May 14, 1846.

### CHANCERY CAUSE LISTS.

Term, 1846.

#### Lord Chancellor.

##### APPEALS.

Day to be fixed	{ Strickland Ditto Ditto	{ Strickland Boynton Strickland	{ appeal
To fix a day.	{ Vandeleur	Blagrave	appeal
To fix a day.	{ Coore	Lowndes	appeal
To fix a day.	{ Minor Ditto	Minor Ditto	{ 2 appeals { suppl. suit
To fix a day.	{ Dalton	Hayter	appeal
To fix a day.	{ Attory-Gen.	{ Masters & War- dens, &c. of the City of Bristol.	{ appeal
	Younghusband	Gisborne	appeal pt. hd.
	Whitworth	Gangan	do.
	Bush	Shipman	do.
	Black	Chaytor	do.
{	Mitford	Reynolds exons. by order	
{	Johnson	Ditto fur. dirs. by order	
	Thwaites	Foreman	appeal
	Watts	Lord Eglinton	do.
	Curson	Belworthy	do.
	Watson	Parker	do.
	Dietrichson	Cabburn	do.
	Bellamy	Sabine	do.
	Attorney-Gen.	Malkin	cause by order
	Johnson	Child	appeal
	Kidd	North	do.
	Dord	Wightwick	do.
	Molesworth	Howard	do.
	Carmichael	Carmichael	do.
	Hawkes	Howell	do.
	Heming	Swinerton	do.
	Trail	Bull	do.
	Youde	Jones	do.
	Wrightson	Macauley	do.
	Lawrence	Bowle	cause by order
	Gompertz	Gompertz	3 causes appeal
{	Morris	Howes	{ appeal
{	Horsman	Abbey	
	Thomas	Blackman	do.
	Bonds	Slyman	do.
	Cooper	Pitcher	do.
	Salkeld	Johnson	on eqy. resd.
	Booth	Creswicke	appeal
	Forbes	Leeming	do.
	Andrews	Lockwood	do.
	Stocker	Dawson	4 causes, do.
May 27 Sharp		Day 2	appeals on demurs.

#### Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

*Mainwaring v. Dickenson*, exons. as to answer.

Bell v. Earl of Mexborough, dem.  
 Sanders v. Kelsey, dem.  
 Colombine v. Chichester, 2 dems.  
 Moore v. Mitchell, 2 dems.  
 25th May, Attorney-Gen. v. Earl of Devon, pt. lrd.  
 Johnson v. Forrester, fur. dirs.  
 Henderson v. Eason, exons. and fur. dirs. and petition.  
 Terry v. Wachter.  
 Simpson v. Holt, fur. dirs. and costs.  
 Garrod v. Moor.  
 { Smale v. Bickford. }  
 { Bickford v. Bickford. }  
 Peacock v. Kernot.  
 Morrison v. Watkins.  
 Wright v. Barnswell, exons. and fur. dirs.  
 Greenway v. Buchanan.  
 Walton v. Morritt.  
 Dobson v. Lyle, fur. dirs. & costs.  
 Parker v. Hawkes, exons.  
 Davison v. Bagley.  
 Penny v. Turner.  
 Giffard v. Withington.  
 Daniel v. Hill.  
 Insole v. Featherstonhaugh.  
 Lane v. Durant, exons. and fur. dirs.  
 Pocock v. Johnson.  
 Cope v. Lewis.  
 Evans v. Hunter.  
 Attorney-Gen. v. Trevelyan.  
 Stert v. Cooke.  
 Blundell v. Gladstone, 4 causes, fur. dirs.  
 Hodgkinson v. Barrow, fur. dirs. and costs.  
 Colbourn v. Coling.  
 Langton v. Langton, 2 causes.  
 Gowar v. Bennett, fur. dirs.  
 Hickson v. Smith, at defl.'s request.  
 Palmer v. Pattison fur. dirs. and costs.  
 Minter v. Wraith, fur. dirs. and cause.  
 Mason v. Wakeman, exons.  
 Hemming v. Spiers, exons.  
 Chambers v. Waters, exons.  
 Lord Beresford v. Archbishop of Armagh, fur. dirs. and costs.  
 Smith v. Robinson.  
 Foster v. Vernon, fur. dirs. and costs.  
 Johnstone v. Lumb, ditto.  
 Vale v. Sherwood, 7 causes, ditto.  
 Haffenden v. Wood, exons.  
 Branscomb v. Branscomb, fur. dirs. and costs.  
 { Stammers v. Hallib, 3 causes, fur. dirs. }  
 { Ditto v. Battye, by order, }  
 Gray v. Gray, 3 causes, fur. dirs.  
 Dorville v. Wolff, fur. dirs. and costs.  
 Richards v. Patterson, fur. dirs. and costs.  
 Short, Roach v. Downer ditto.  
 Beaton v. Beaton.  
 Woodman v. Madgen, fur. dirs. and costs.  
 Attorney-Gen. v. Pearson, exons. and fur. dirs.  
 Short, Cradock v. Piper, fur. dirs. and costs.  
 Dawson v. Chappell, fur. dirs. and costs.  
 Andrew v. Moore ditto.  
 Wait v. Horton ditto.  
 Montague v. Cator, fur. dirs. and costs.  
 Groom v. Stinton, 4 causes.  
 Elliott v. Elliott.  
 Ford v. Westall.  
 Short, Corbett v. Limbrick, fur. dirs. and costs.  
 Baxter v. Abbott, fur. dirs. and costs.  
 Woods v. Woods, 5 causes.  
 Webb v. Gower.  
 Bagshaw v. Macneil.  
 De Beauvoir v. De Beauvoir, fur. dirs. and costs.  
 Beale v. Warder, rehearing.  
 Turner v. Simcock, fur. dirs. and costs.

Booth v. Lightfoot, fur. dirs. and costs.  
 Waugh v. Waugh.  
 Tufnel v. Dwyer.  
 Ludlow v. Guilleband, fur. dirs. and costs.  
 Parris v. Loosemore, 2 causes.  
 Hurst v. Kemp.  
 Ashton v. Higginbottom, 2 causes.  
 Bourne v. Hassell, 2 causes.  
 Maitland v. Rodger, 2 causes,  
 Howell v. Saer, 2 causes.  
 Teague v. Woodfall.  
 Attorney-Gen. v. East India Company.  
 Plowden v. Thorpe.  
 Warne v. Golding.  
 White v. Thorndell.  
 Major v. Major.  
 Pinkey v. Remmett.  
 Bailey v. Fardell, fur. dirs. and costs.  
 East India Company v. Coopers' Company.  
 Baker v. Bayldon.  
 De Visne v. Graham, 2 causes.  
 Short, Hollings v. Kirkby, 3 causes.  
 Roberts v. Cardell, exons.  
 Cook v. Tynney.  
 Baker v. Walton.  
 De Sols v. Mesnard.  
 Campbell v. London and Brighton Railway Co.  
 Whitsett v. Jackson, fur. dirs. and costs.  
 Short, Langston v. Manby.  
 Stephens v. Green, 2 causes.  
 Jessop v. Jessop.  
 McDermot v. Wilcox, 2 causes.  
 Flight v. Bushby.  
 Blair v. Bromley.  
 Burt v. Burnham.  
 Robertson v. Lockie.  
 Nicholson v. Locke, 2 causes.  
 Warwick v. Richardson, exons.  
 Morgan v. Kingdon, fur. dirs. and costs.  
 Marshall v. Marshall, ditto.  
 Dolland v. Reed.  
 Lewis v. Hinton, fur. dirs. and costs.  
 Duncombe v. Levy.  
 Wilson v. Williams.  
 Dell v. Dell.  
 Burnett v. Mackenby.  
 Robotham v. Amplett, exon.  
 Short, Poole v. Troughton.  
 Fraser v. Jones.  
 Short, Brown v. Colven.  
 Halford v. Staines.  
 Rippin v. Dolman.  
 Goldsmid v. Drewe, fur. dirs. and costs.  
 Pepper v. Decker.  
 { Fauldnig v. Newborn }  
 { Ditto v. Shiriff. }

### Vice-Chancellor Knight Bruce.

#### CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Curry v. Curry, plea.  
 Michaelmas Term, Dodsworth v. Lord Kinnaid,  
 at request of defl.; Ditto, Same v. Same.  
 23rd May, Taylor v. Taylor.  
 Middleton v. Wolf.  
 22nd May, Rowe v. Hardej.  
 Hanwell v. Denton, fur. dirs. and costs.  
 17th July, Caton v. Rideout.  
 Attorney-Gen. v. Mayor, &c. of Newcastle-upon-Tyne.  
 22nd May, Beilken v. Radlin.  
 22nd May, Hawthorne v. James, fur. dirs. and costs.  
 Wykes v. Higginson, fur. dirs. and costs.

Thomas v. Floud, exons.  
 Ditto v. ditto, fur. dirs. & costs.  
 Topham v. Buxton.  
 Attorney-General v. Harvey.  
 Mounsey v. Mitchell.  
 Smith v. Webster fur. dirs and costs.  
 Davies v. Salisbury.  
 Morley v. Bridges.  
 { Baker v. Smith } fur. dirs. and costs.  
 { Ditto v. Baker }  
 Leay v. Ingle.  
 Goodrick v. Exall.  
 Malins v. Price.  
 Oldfield v. Tartz, fur. dirs. and costs.  
 Brent v. Brown.  
 { Chaplin v. Garvick }  
 { Ditto v. Chambers }  
 Hamond v. Swayne, fur. dirs. and costs.  
 Morehouse v. Newton.  
 Sowden v. Marriott.  
 Collis v. Collis.  
 { Denman v. Mead }  
 { Ditto v. Harding }  
 Ulph v. Darlington.  
 High v. Dixon, fur. dirs. & costs.  
 Richards v. Haynes.  
 Jones v. Jones.  
 Fuller v. Fuller.  
 Roper v. Yellop.  
 Hales v. Plowden.  
 Hales v. Darrell, 5 causes, fur. dirs. and costs.  
 Scott v. Fenning.  
 Langdon v. James.  
 Attorney-Gen. v. Pearson.  
 Attorney-Gen. v. Berry.  
 Short, Ireland v. Cox, fur. dirs. and costs.  
 Helliwell v. Briggs, 2 causes.  
 Hambury v. Ward.  
 Querrill v. Binnimore, fur. dirs. and costs.  
 Lashman v. Lashman, ditto.  
 Butcher v. Rich ditto.  
 Caledonian In. Co. v. Gibb.

### Vice-Chancellor Bigram.

CASES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Hole v. Pearce.  
*To sit a day.* Phillips v. Meinertzhagen.  
*S. O.* Beadman v. Beadman, fur. dirs.  
*After T.* Ward v. Key.  
 Lancaster v. Jackson.  
*S. O.* Thomas v. Reynolds, exons.  
 22nd Preston v. Wilson.  
 Stinton v. Avern.  
 Gibson v. Inga.  
 Sharland v. Mildon, 2 causes.  
 Garth v. Maclean.  
 Shafto v. Shafto.  
 23rd May, Rodgers v. Nowell, pt. hd.  
 22nd May, Cotterell v. Homer.  
 22nd May, Fyson v. Adams.  
 22nd May, Allen v. Knight, pt. hd.  
 { Ward v. Ward }  
 { Ditto v. Whitmore }  
 Alsager v. Miller.  
 Lambury v. Perks.  
 22nd { Paterson v. Wilson }  
 May, { Ditto v. Balcher. }  
 Lander v. Kendall.  
 Jones v. Thomas.  
 Bailey v. Lambert.  
 Flight v. Minviest.  
 Lowes v. Lowes, fur. dirs. & costs.

{ York v. Pole }  
 { Ditto v. Collins }  
 Bower v. Scott.  
 Western v. Wood, exons. 2 sets.  
 Teschemaker v. Eccles.  
 { Sayers v. Lacon, exons. }  
 { Ditto v. ditto, fur. dirs. }  
 Edys v. Hunter.  
 { Jackson v. Pickering, fur. dirs. }  
 { Hutchinson v. ditto, 2 causes. }  
 Joynton v. Twigg.  
 { White v. Van Sandan. }  
 { Ditto v. Hedges. }  
 { Mellen v. Stanley, fur. dirs. }  
 { Ditto v. ditto, cause. }  
 Walker v. Sharpe.  
 Sweeting v. Hellard, fur. dirs. and costs.  
 Burch v. Western, exons.  
 Short, Harrison v. Harrison, fur. dirs. and costs.  
 Short, Ditto v. ditto.  
 { Clark v. Appleton } fur. dirs. and costs.  
 { Ditto v. Clark }  
 McMahon v. Baseball ditto.

### MASTERS EXTRAORDINARY IN CHANCERY.

From April 21st, to May, 22, 1846, both inclusive, with dates when gazetted.

Burd, John Marsh, Okehampton. May 19.  
 Bush, Harry Edgell, Trowbridge. May 8.  
 Calver, James Charles, Kenninghall. May 19.  
 Handley, Charles, Warwick. May 22.  
 Lee, Charles Marsh, New Sarum. April 24.  
 Perrin, James, Wootton-under-Ede. May 15.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From April 21st, to May 22, 1846, both inclusive, with dates when gazetted.

Blake, Francis, and George Tamplin, 6, King's Road, Bedford Row, Attorneys and Solicitors. April 21.  
 Cook, George William Francis, and Edward Humphreys, 28, St. Swithin's Lane, Attorneys and Solicitors. April 21.  
 Hayward, John, and John Broughall, Oswestry, Attorneys and Solicitors. May 22.  
 Mitton, Thomas, and William Nealer, 23, Southampton Buildings, Attorneys and Solicitors. May 15.  
 Robinson, William, and Thomas G. Dodson, Lancaster, Attorneys and Solicitors. April 24.  
 Smith, James, and John William Browne, Swindon and Marlborough, Attorneys and Solicitors. May 12.  
 Thomas, David, and Evan Thomas, Brecon, Attorneys and Solicitors. April 24.  
 Thomas, William, Samuel Lepard, and David Williams, 9, Cloak Lane, Attorneys and Solicitors. May 8.  
 Vaughan, Philip, and George Bees Bevan, Brecon, Attorneys and Solicitors. April 21.

# PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

## House of Lords.

### NEW BILLS.

Real Property Conveyance.—In committee. See the bill pp. 50, 70, *ante*. Lord Brougham. General Registration of Deeds. — Lord Campbell. Deferred until the Corn Bill has passed.

Religious Opinions Relief.—Re-committed. Lord Chancellor.

Punishment for deterring Prosecutors, Witnesses, &c.—In Committee. See the bill, 31 L. O. 472. Lord Denman.

Metropolitan Buildings.—For 2nd reading. See the bill, 31 L. O. 426.

Railway Companies Dissolution.—For 3rd reading. Lord Dalhousie.

Railway Deposits.—In Committee. Insolvent Debtors' Act Amendment. — In Committee. Lord Brougham.

Friendly Societies.—In Committee. St. Austell Small Debts Court.—In Committee.

### Real Property Registration.

Petitions against, from Attorneys of—  
Liverpool,  
Beverley, and  
East Riding.

## House of Commons.

### NEW BILLS.

Administration of Criminal Justice.—To be reported.

Bankruptcy and Insolvency.—For 2nd reading. 10th June. See the bill, 31 L. O. 569. Mr. Hawes.

Roman Catholics' Relief. — Re-committed. See the bill, p. 402, *ante*. Mr. Watson.

### Small Debt Courts:

Salford, Hundred.—Reported.

Somerset,

Northampton,

Birkenhead. Reported.

Poor Removal. — In Committee. Sir J. Graham. See analysis of the bill, 31 L. O. 473.

Highway Laws Amendment.—For 2nd reading. Sir James Graham.

Corresponding Societies, Lectures, &c. Mr. T. S. Duncombe.

Metropolis Interments. Mr. Mackinnon.

Death by Accidents Compensation. For 2nd reading.

Deodands Abolition. Mr. Bouverie.

Total Abolition of the Punishment of Death. Mr. Ewart.

## LEGAL OBITUARY.

April 20th. — Archibald Richard Francis Rosser, Esq., Solicitor, of No. 63, Lincoln's Inn Fields, after an illness of nine weeks, aged 57. Admitted on the Roll, Michaelmas Term, 1810.

26th. — At Llandover, Henry Lloyd Harries, Esq., Solicitor, aged 43. Admitted on the Welch Roll, 18th Oct. 1830.

May 1st. — At his Chambers, Lincoln's Inn, David James, Esq., Barrister-at-Law, aged 55. He was a member of Lincoln's Inn, and was called to the bar in Michaelmas Term, 1815.

6th. — At Dusseldorff, Henry Comyn Berkeley, Esq., formerly of Lincoln's Inn, Solicitor. He was admitted on the Roll in Michaelmas Term, 1807.

11th. — At Herne Hill, Surrey, John Birkett, Esq., of Cloak Lane, Solicitor. Admitted on the Roll, Easter Term, 1794.

22nd. — Francis Hildyard, Esq., of the Inner Temple, Barrister-at-Law, Fellow of Clare Hall, Cambridge. He was a member of the Inner Temple, and was called to the Bar in Easter Term, 1838.

23rd. — George Robert Michael Ward, Esq., Barrister-at-Law, aged 46, of Lincoln's Inn. He was called to the Bar 19th June, 1828.

24th. — John Newland, Esq., of the Inner Temple, aged 87, Barrister-at-Law. Called to the Bar 20th Nov. 1795.

## THE EDITOR'S LETTER BOX.

THE second part of the Analytical Digest of the Common Law Cases is prepared, and the 1st section, comprising the decisions on questions raised upon the construction of the statutes, will appear next week. Those on the Principles of the Law and on Pleading, Practice, Evidence, and Costs will follow week by week.

The identity of the intended legatee mentioned by "J. H." seems clear, and the circumstance he refers to will, we think, be deemed immaterial. We must leave our correspondent to hunt for the cases, which are of a rather disagreeable kind.

The new statutes of the session, so far as they alter the law, shall be given fully. We have no intention to burthen our readers with separate publications of important acts: they shall all be included in the Legal Observer, and accompanied with explanatory notes. This course we adopted long ago, and shall not fail to continue it. The present volume, therefore, will comprise all the statutes of the session of any utility to our readers.

A. bought some shares in a railway company of B. in the market at a premium. The bill was thrown out on the standing orders. If the company should be dissolved, A. being the holder of the scrip, would be entitled to receive back the deposit, less the expenses, but it appears on the authority of *Kempson v. Saunders*, 31 L. O. 352, that A. could maintain an action against B. for the amount paid for the shares. If A. should receive any portion of the deposit, would this not bar his right of action against B., or could he recover the difference between the amount of deposit received back and the value paid for the shares?

Some articles in the last number of the Law Review shall receive early attention.

# The Legal Observer.

SATURDAY, JUNE 6, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## CONTRACT OF SALE.

### DOCTRINE OF PART PERFORMANCE.

By the 17th section of the Statute of Frauds, relative to “goods, wares, and merchandizes,” the contract of sale may be rendered binding in various ways; as by acceptance and actual reception of the thing sold, or of part of it; by earnest; by part payment; or by a written note or memorandum; whereas, by the 4th section of the same statute respecting “lands, tenements, and hereditaments,” the contract can be made binding *in one way only*, that is, by a written note or memorandum, duly signed by the party to be charged therewith.

Nevertheless another way of binding contracts for the sale of “lands, tenements, and hereditaments,” has been admitted by courts of equity under certain states of circumstances, which have given rise to the doctrine known by the title of *part performance*, the principle of which is entirely different from that of the part performance of contracts for the sale of “goods, wares, and merchandizes” mentioned in the 17th section.

What is meant by the doctrine of part performance as understood in equity with reference to the 4th section of the Statute of Frauds is this, that a man shall not be allowed to make that section an instrument of injustice. Thus the 4th section provides that the contract shall not be enforced, unless it be established by some written note or memorandum. But suppose, in a case where there is no such written note or memorandum, that one of the parties, relying on the verbal agreement, performs *his* part of the contract; shall the other be allowed to withhold performance?

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Courts of equity for upwards of a century past have said that he shall not; because to withhold performance under such circumstances would be a fraud.

The earliest case of this description, after the passing of the statute, was that of *Foxcroft v. Lister*,<sup>a</sup> which came before Lord Keeper Wright, on the 6th March, 1700. There the plaintiff demanded specific performance of a contract for a building lease, alleging that he had, on the faith of the agreement, which was merely verbal, pulled down certain houses and built up others. His lordship dismissed the bill, holding that the contract was not legally established as required by the statute; whereupon an appeal was taken to the House of Lords, and the question was argued on behalf of the appellant by Sir Joseph Jekyll,<sup>b</sup> who rested the case on this ground, that “although the agreement had not been reduced to writing, (which was occasioned by the entire confidence the parties had in each other,) yet the same having been at the appellant’s great expense executed on his part, there ought to be a reciprocal performance of it on the other part.” The respondent contended, that inasmuch as there was “nothing of such pretended agreement in writing and signed by either of the parties, the statute was a full bar to the claim.” The House of Lords, by the advice of the Ex-Chancellor Somers, the only law peer present,<sup>c</sup>

<sup>a</sup> Coll. Parl. ca. 108, and see also 2 Vern. 456.

<sup>b</sup> Afterwards the famous Master of the Rolls, who held that office for nearly a quarter of a century.

<sup>c</sup> Lord Keeper Wright sat on the woolsack, and *superintended* the reversal of his own decree; but not being a member of the house, he of course had no vote in the judgment.

on the 7th April, 1701, reversed the order of the Lord Keeper, and a building lease was decreed. The equitable doctrine of part performance, therefore, is the creation of Lord Somers, and must be regarded as now firmly seated in courts of equity, although some of our most eminent judges have doubted its expediency. We at once admit that it is a direct contravention of the words of the statute. But as that famous enactment was intended to prevent frauds, a doctrine calculated to promote the same end can hardly be regarded as inconsistent with its spirit. If we had a record of the speech of Lord Somers, (in whose time the act was prepared,) it would have placed the doctrine of which he was the parent, on a footing perhaps not irreconcilable with the provisions of the statute.

Lord Somers, we know, was not a little versed in the Roman civil law. From that fountain he might have derived the principle upon which he recommended the reversal of the decree in *Fowcraff v. Lister*. For by the Roman law, (followed in that respect by the law of Scotland in the present day,) so long as a contract was incomplete, either part was at liberty to retract or repent. In technical language, there was *locus penitentiae*. One exception to this rule was admitted on grounds of equity, wherever it appeared that the party desiring to *repent* had, with full knowledge of all the circumstances, permitted or consented to the adverse party proceeding, (in reliance on the imperfect agreement,) to do some act which would prove detrimental to him unless the contract were decreed to be fulfilled on the other side. This was called *Rei interventus*. Another exception arose where the party proposing to avail himself of the *locus penitentiae* had himself deliberately done an act, or expressly consented to the taking of some step which was approbatory and confirmatory of the imperfect agreement. This was called *homologation*; a head so extensive in the system of the neighbouring county that Sir Charles Wetherell, on one occasion at the bar of the House of Lords, happily denominated it the "giant of Scotch Law."

But although it is instructive to trace things to their originals, it is dangerous to do so without due discrimination. The hint upon which the equitable doctrine of part performance is founded was indeed borrowed from the Roman law. We will venture, however, to affirm that no safe light can be derived from that enlightened

body of jurisprudence to illustrate the maxims on which our English courts of equity proceed in awarding specific performance of contracts relating to land where there is no writing to satisfy the requirements of the statute, and the ground of interference is simply that one of the parties has acted on the agreement and demands reciprocity. For in the first place, the Roman law did not enforce the specific performance of agreements; that important branch of equitable jurisdiction being one of our very few indigenous legal plants. And in the second place, there is this great difference between the Roman and English law on the point in question, namely, that the Roman law, when it excluded the *locus penitentiae*, assumed the contract to be imperfect and incomplete; whereas, when a court of equity in this country decrees specific performance, on the ground of a partial execution of it by one of the parties, the contract is all along taken to have been the subject of *mutual* assent, although that assent, not being reduced to writing, falls short of the requisites of the Statute of Frauds. Indeed the very terms employed by the legislature import that the contract is complete,—that all its conditions are agreed upon, and that there has been that indispensable interchange of consent between the parties which constitutes the essence of a final agreement. In such a case performance on the one side will be a ground upon which to demand performance on the other. But courts of equity do not *make* contracts, though they enforce them. If it appear that the parties never agreed,—that matters were merely in a state of treaty, no averment or proof of performance on the one side will induce our English court of equity to decree performance on the other.

## REGULATION OF RAILWAY PROJECTS.

We have previously noticed Mr. Thomas Turner & Beckett's able pamphlet on this subject,\* and now proceed to state the remedies he suggests for the future conduct of railway enterprise; and this we do in

\* Railway Litigation, and How to Check it; with Remarks on the proposed Railway Relief Bill, and Suggestions for regulating the future conduct of Railway Enterprise. By Thomas Turner & Beckett, Attorney-at-Law. London: E. Wilson and J. Ollier, pp. 32.

reference to the Railway Relief Bill now before parliament. Mr. à Beckett observes:—

"That a code of laws will one day be framed to govern the transactions commercial and otherwise, connected with railways, I entertain no doubt. There is no branch of trade or commerce to which the care, protection, and encouragement of the legislature should be more abundantly given, while the unforeseen conflict and utter inadequacy of the existing laws when applied to railway questions, is so obvious, that it is beginning to be understood they form a class of cases of the utmost importance, for which practically no legislation whatever exists. The points on which I now venture to offer suggestions have reference to those which are at present before the public.

"All the mischief that has arisen has had its source in a feeling of *non-responsibility*, on the minds of those persons who have made themselves parties to the new projects. The notion entertained by the public, that applications for shares entailed with them no pecuniary obligations, led many thousands to propose to become members of railway companies, on the chance of getting shares that would command a premium. The extraordinary avidity with which every project appeared to be caught up, encouraged persons to put themselves forward as directors, under a conviction that there would be a subscription abundantly sufficient to bear them harmless. Every fresh scheme, so far from checking, gave an additional impetus to the movement, as, in the confusion of numbers, it became impossible for those who were taking a part in it to consider the merits of individual projects; and it soon came to be understood, by parties to whom their formation might prove profitable, that nothing more was necessary to get subscribers than to announce their existence. Before the allotments were made, a panic took place, and the effects it has produced we are all at this moment witnessing in utter dismay. To avoid the recurrence of so frightful a calamity, I propose that rules of law shall be laid down for imposing upon all persons engaging in the formation of railway undertakings, a defined liability, capable of being readily enforced, which, while sufficient to induce consideration, shall not be so onerous as to check legitimate enterprise."

The following are the regulations recommended by Mr. à Beckett, and which we trust will be well considered by the Board of Trade or others engaged in considering the subject:—

"I would, in the first place, provide that the general expenses of preparing for parliament should be recoverable by creditors from the directors alone, and that such persons only should be deemed directors as, under their own hands, should have declared themselves to be so. I would, moreover, make it compulsory upon those persons, at the very outset, to specify the exact number of shares they contem-

plated appropriating to themselves, and would not allow the name of any person to be put forward as a director who should not, *before its announcement*, have been duly registered. This would secure parties from the danger of their acts being construed into a permission they never intended to afford, while it would simplify the proof of their liability when it ought to exist, and deprive them of the opportunity of denying an authority really given, should they afterwards feel it convenient to repudiate it. The rule requiring directors to register within twenty-one days from their acceptance of office is found quite ineffectual for the accomplishment of these objects, and experience has shown that they are most important. I would, moreover, require that before any scheme should be publicly advertised, its directory should be fully formed, leaving it to the parties themselves to fix its number, and that no change in its constituency should afterwards be allowed, except for the purpose of supplying vacancies occasioned by death or resignation. This arrangement would render it of the first importance to the success of the scheme that its original directory should be composed of persons entitled to public confidence, and would at the same time furnish ample proof that the parties put forward were really engaged in the undertaking. If the projector of the scheme should fail in engaging in it at the outset, men of substance and character, he would have to bear personally the whole of the trouble and expense of bringing it under their notice, thus carrying out the true principle upon which the oft-quoted cases of *Nicolls* and *Crosby*,<sup>a</sup> and *Kempson* and *Saunders*,<sup>b</sup> were decided.

"To guard against the fraudulent announcement of directors' names, I would make it necessary for the printer of any paper containing a list of such names, to require to be deposited with him, as his authority, a certified copy of the list as registered; and would render the falsifying such list, or any other wilful misrepresentation as to the names of directors, highly penal.

"Having thus secured the formation of a responsible body as the conductors of the concern, I would authorise their inviting the public generally to join it; and upon parties applying for shares, according to a fixed form, would give the directors power to enforce whatever the applicants, by that form, undertook to do, provided the request made therein were complied with within a given period, and the deeds agreed to be executed contained certain provisions for the protection of shareholders, which the government should require all subscribers' agreements to embody, and which no sub-deed should be allowed to defeat; but before proceeding to enforce payment of the subscriptions, I would make it necessary for the directors to allot every share, and to file a duplicate of the allotment book with the Registrar of Joint Stock Companies, which should

<sup>a</sup> 3 B. & C. 814.

<sup>b</sup> 4 Bing. 5.



be open to the inspection of the allottees, free of charge.

"To guard allottees against being burdened with a larger share in the concern than they applied for, I would, in case all the deposits should not be paid up before proceeding to parliament, make it necessary for the directors to call a meeting of the allottees; and unless they or the directors chose to divide among themselves the shares not paid upon, they should (as majority might decide) either break up the concern, or make up the deficiency in the number of shares taken, by enforcing payment from the defaulters, or proceeding to a fresh allotment. Under no circumstances should the directors be allowed to go on unless every share were in the hands of some *bond fide* holder.

"If the directors should find it impossible to distribute all the shares within a fixed period from the scheme being made public, they should then be allowed to break it up, taking from the allottees, who had applied for shares, their rateable proportion of the expenses only, and they, the directors, bearing among themselves the remainder, whatever it might amount to.

As a protection to allottees, I would make it necessary that the accounts of every abandoned concern should, after being examined and allowed by a public officer, be filed with the Registrar of Joint Stock Companies; and that in default of this being done, or in default of a return of the fair proportion of the subscription money, any allottee might, by summoning any of the directors before a commissioner of bankrupts, obtain an order for the immediate payment of either the whole deposit or (in case accounts should have been filed) of the amount he might show he had paid more than his proportion;—and, as a still further protection, I would give allottees the power of treating as abandoned all concerns in which no steps had, during a period of twelve months, been *bond fide* taken to carry out the objects thereof, whether the directors had or had not formally declared them to be so."

#### NOTICES OF NEW BOOKS.

*Remarks upon the Progress and Present State of the Law of Commercial Bankruptcy, with a few Suggestions for its Amendment.* By SIR GEORGE ROSE, Judge in Bankruptcy. London: V. & R. Stevens and G. S. Norton, 1846. Pp. 24.

THE learned writer of this pamphlet commences it with some observations on the bill now before parliament, introduced by Mr. Hawes and Mr. Masterman, "to amend the law relating to Bankruptcy and Insolvency"—"two heads of legislation and law," he says, "once scrupulously kept distinct, but in latter times not very

wisely amalgamated." Admitting the propriety of the measure so far as it professes to supply more stringent means for checking the evasions and frauds which daily occur in cases of insolvency,—distinguished for their "poverty of assets,"—Sir George Rose expresses his regret that a larger view of bankruptcy and insolvency has not been taken by the honourable member for Lambeth, and a remedy applied, which to the discredit of the commercial law of England has long been loudly called for,—a state of things which he thus illustrates:—

"Suppose—however extravagant the supposition—that the honourable member for Lambeth himself, or any of the great commercial aristocracy in the house, or out of it, should find themselves in circumstances embarrassed; however slight or severe, temporary or lasting, might be the embarrassment: and then to ask where, in all the innumerable statutes constituting our code of bankruptcy, or insolvency, or both, are to be found the laws and remedies applicable to such a supposition? To the suggestion, 'What if we fail?' it may with justifiable confidence be answered, 'We shall not fail.' But should they not screw their courage to this sticking place; are they aware of what ingredients of toil and trouble the cauldron is made up; with what associates of fraud, and in what co-ordinate range of beggarly accounts they must pass through Basinghall Street—'with the bankrupt, the prodigal, who scarce dare show his head on the Rialto,'—and 'the Poor Sequestered Stag.'"

"It is a strong, very strong, but an allowable illustration, to imagine a Baring or a Rothschild in the *Gazette*—but being so placed, themselves and their millions of assets, their intricate concerns and engagements all over the world, pass to the same tribunal with, in these days, too many of the same description as those above alluded to, whose funds may possibly be available to the working of the flats, and by good omen, to a something in the pound of dividend—as it may be. But it is not necessary for this illustration to take such extreme cases as those that I have imagined; put it to all who stand in the recognised class of our merchants, or in the higher class of our manufacturers and tradesmen, and it cannot but be felt, that objectionable as at all times has been to such individuals the notion of the *Gazette*, even when it was restricted to the merchant and trader of some pretension to property, that repugnance has been beyond endurance increased by the extension of the process to every description of work and labour, and by its association with the lowest and too frequently the most dishonest pauperization."

Whilst the Law of General Insolvency does not stand upon a very desirable foot-

ing,\* that part of it which relates to *commercial failure* Sir George contends is a discredit to the legislature:—

"Immense as is the commerce of England, true it is, that this is the only country in which there is no system sanctioned by law for protecting the merchants in the superintendence of their embarrassed affairs, and under the sanction of which their involvements may be disentangled, their engagements sustained or carried out, or put an end to, with the least possible shock to their own affairs, and to the credit and engagements of others—with cautions calculated to prevent the overthrow of many in any particular convulsion. The bankruptcy law to this day has proceeded, and now stands upon principles which exclude, what above all things in great commercial embarrassments are wanted, discretionary administration, surveillance, inspectorship, direction. To break up, sell, and divide with promptness (and rightly and usefully so, in many of its objects) is the operation of the fiat; and for such cases it is wise that the system should exist: but let any of the eminent solicitors of London and Liverpool be asked whether, if they had in safety the option of the arrangement, this is the mode of dealing to which they would submit the great interests of the merchants. If, with safety, and under protection of law, they could carry out deliberate regulation and accorded arrangement, they would wish to submit their debtor client, or recommend their creditor client to a fiat—they may endeavour now to attain, and providently may accomplish, a composition—but always in defiance of the law, and in full apprehension that at some awkward moment its orthodox process may be put in motion to defeat it. In truth for the merchant royal—not always exempt from 'losses enough to pull a royal merchant down,' for their Argosies wrecked and fortunes stranded, the Court of Bankruptcy and Insolvency, ably and learnedly as it is appointed in all its functionaries, is not the commodious harbour of refuge or refitment—and there is no other.

"I have now before me the case of one of the great houses that failed in the year 1837, and let it be noted what was done. The house and its friends, at the first alarm, invited investigation; an estimate of its assets and liabilities was taken by inspectors chosen by the Bank of England; it was submitted to the Directors, as the basis on which advances should be made to float the house through its difficulties; the assets were £678,000. Time, immediate assistance, and arrangement, gave the best hopes; a fiat was consternation, and would have been ruin. A meeting of creditors was called: it was found that to liquidate the concerns of the house proper time and proper measures were

required. They appointed managers and trustees, and they were fortunate enough—but it was good fortune only that saved them—to be thwarted by no dissentient creditors. I speak from no slight acquaintance with this subject, when I say, that to such a state of things the law and practice in bankruptcy was not only not adapted, but that a resort to a fiat would have been destructive, not only to the house itself, but to many of the circle of its extensive connexion, yet a fiat was the only course sanctioned by the law."

The learned judge then gives a lively and rapid sketch of the history of our bankruptcy system, and contends that we are losing sight of the sounder principles recognised and acted upon in earlier periods.

"What" (he asks) "is a *fiat* of bankruptcy now, but in too many cases process at the instance of a very low class of creditors, against or for a very low class of debtors, with a very low amount of assets, too often at a very low scale of honesty? Add to this, that the debtor may concert his own act of bankruptcy, concert his own commission, either by himself or his friend; at his own time and convenience make over his property, and give preferences which no prior act of bankruptcy can overreach: in short, bankruptcy, the commercial code, such as it was, of the English merchant, is at an end—at a time, too, when the public were fully justified in entertaining the greatest expectations from the appointment of a separate and independent jurisdiction in bankruptcy, a measure which has proved to be of the highest advantage, a tribunal which, in no respect, and in none of its learned and distinguished commissioners, has been deficient in or unequal to its duties, and whose services, with their sanction, I would wish to see extended to measures which these few pages advert to, and which, under their auspices, and with their assistance, will in my humble opinion, for the benefit of the public, be advantageously carried into effect.

"Bankruptcy and insolvency, long gradually approximating, after gentle whispers through the chink of the whitewash that obstructed them, have now indeed kissed each other. They may be typed as 'Pyramus and Thisbe, with Wall and Moonshine,'<sup>d</sup> the latter better known as "*assets*" in the Courts of Basinghall:—

'This man with lime and rough-cast doth present Wall, that vile Wall which did these lovers under, And through Wall's chink, poor souls, they are content

To whisper—

Wall. Now have I, Wall, my part discharged so; And being done,—thus—Wall away doth go.'

Exit WALL.

And, as Theseus very well observes,—

'Now is the mural down between the two neighbours.'

\* The result of the present law in one London court up to Dec. 1845, as stated in the *Law Review*, has been:—insolvents 605; assets 2,891*l.*, being an average of 4*l.* 1*s.* in each case.

<sup>d</sup> A *Midsummer Night's Dream*.

• Some copies read not inaptly, whether re

"Aptly enough, therefore, is a bill now before the house called a "Bill for amending Bankruptcy and Insolvency,"—to most purposes now is the Court of Bankruptcy a Court of Bankruptcy and Insolvency, and I regret it; for sad has been the issue of the union of this ill-omened pair,—a pie-balled brat, with the worst features of either parent. 'The moral' is indeed 'down.'

After advertng to the provisions of the bill, as probably effecting improvements in regard to the *lower* class of debtors, Sir George (with great earnestness) urges our legislators to do something for the *better* order of insolvents, and above all for *mercantile failure*. For this purpose he contends that little remains to be done but to give to the stat. of 6 Geo. 4 the effect which it was intended to have. Thus he says,

"Enact, that where a trader is indebted to one or more creditors in the sum of 500*l.*, and whose assets amount to the sum of 10,000*l.*, shall execute any conveyance or assignment by deed to a trustee or trustees of all his estate and effects for the benefit of all his creditors, it shall not be deemed an act of Bankruptcy, nor shall it be defeated by any other act of Bankruptcy, nor shall any fiat issue against such trader other than by and under the direction of the Court of Bankruptcy. I would fix an amount of debt and of assets for this purpose, because I think a line should be drawn betwixt those who should be within mercantile Insolvency proper, and those who may be better left to the ordinary proceedings in Bankruptcy and Insolvency. This is not the place to go through all the details of such a measure, or to state the details by which it may be made most effective, but as a few suggestions I would offer that, after execution by the trader, the deed, &c. be deposited in the office of the Secretary of Bankrupts, together with a statement of the amount of assets, and the schedules of books and the names of creditors, verified by affidavit, and necessary notoriety should be given by advertisement in the *London Gazette*, and the newspapers.

"I would give to the Court of Bankruptcy jurisdiction in these trusts, to be executed upon the principles and the practice of the Court of Chancery, qualified, in respect of proofs of debts, by the practice in bankruptcy; there should be jurisdiction in analogy from what is done in administration of testamentary assets,

gard he had to bankruptcy or insolvency, or to Pyramus and Thisbe—

"Now is the moral down between the two neighbours;"

for—

"Invid, dicebant Paries, quid amantibus obstas? Quantum erat ut sineres nos toto corpore jungi?"

And so has it come about.

to restrain by injunction the particular proceeding of any creditor, whether by action or fiat; and connected with this, to approve of any scheme of management, of inspectorship, of conducting any trade or business that it would be mischievous to crush, and generally, as might be most for the benefit as well of creditor as debtors, trustees, and *cestui que trust*, to administer the assets in conventional liquidation. It would, I think, be right that nothing in the trust deed, &c., should preclude any creditors not having assented to its provisions from challenging its arrangements, as far as the same were not founded on good faith, or were contrary to law and equity, or from disputing any debts, claims, or preferences, and from seeking the removal of trustees, and inspectors, as a case should be made for such interference; and I would provide, if the Court of Review should be satisfied that the trust deed, &c., was not a fair and *bond fide* arrangement, or could not be carried out for the benefit of, or according to the intention of the parties, it might so construct and amend the same as would accomplish that object, or might declare it to be an act of Bankruptcy, and order a fiat to be prosecuted thereon, and transfer all proceedings to which there was no objection to such fiat, and to assignees in whom by operation of law should be invested all the estate and effects of the debtor. Of course many more incidental provisions would be requisite and obviously present themselves; the arrangements would be readily grafted upon the present Court of Bankruptcy, its officers, its accountant-general, and its official assignees, all most useful auxiliaries to the duties thus proposed to be introduced. It is well known that the clause in the 6 Geo. IV., to which I have alluded, was borrowed from the Scottish Sequestration Act, and was intended to introduce here what is known in Scotland as "the Composition Contract." There it has been found to work advantageously for all parties. So undoubtedly it would have done in England, had it not, for the reasons I have already stated, been found impossible to work it at all. That eminent advocate, the late Mr. Bell, of the Scottish Bar, in his admirable work on Bankruptcy, augured very great benefit from the adoption of the Composition Contract into our law, and promised to us a more beneficial working of it than even in his own country. 'Trusts,' says he, 'are peculiarly under the control of a Court of Equity. In England, the facility with which a trustee is amenable in the Court of Chancery to answer for his conduct, gives to the English trusts an eminent advantage over trusts in Scotland.' So thought, and rightly thought, that eminent lawyer, of course not aware that here an act of Bankruptcy could be permitted to defeat them. The principles and practice of the Court of

'In France, a majority of three quarters in number and value, can accept a composition and bind the remainder. Code de Commerce, Art. 519.

Chancery are those of the Court of Bankruptcy, the machinery and means are ample; is it too much to expect that, with some such enactments as I have suggested, at least the experiment should be tried?

We are glad to see that the learned writer has taken up this subject. Having been extensively engaged whilst at the bar, as well in advocating cases before the court, as in reporting the decisions in that branch of practice, and having presided as a judge in the Court of Review in bankruptcy, Sir George is peculiarly qualified to advise on the best course to be pursued in this important and complicated branch of law and practice; and we earnestly trust he will continue to apply his mind to the proper remedies for the existing evils.

#### ADMISSION OF COUNTY PALATINE ATTORNEYS INTO THE COURTS AT WESTMINSTER.

The 65th section of the 6 & 7 Vict. c. 73, for consolidating and amending several of the laws relating to Attorneys and Solicitors practising in England and Wales, enacts,

"That all persons who, previously to the 1st January, 1843, shall have been duly admitted and enrolled attorneys or solicitors of any of the courts of law or equity at Westminster, or of the Courts of the Duchy Chamber of Lancaster at Westminster, or of the Courts of the Counties Palatine of Lancaster or Durham, or either of them, shall and may be admitted and enrolled attorneys and solicitors in the said High Court of Chancery, or all or any of the said Courts of Queen's Bench, Common Pleas, or Exchequer, at Westminster, in pursuance of the provisions of this act, *without examination*, upon payment of such duty as by law required: Provided always, that upon such admission being duly perfected, such person shall be considered to have been attorneys and solicitors of such court in which they shall be so admitted, from the date of their first admission into any other of the said courts, provided that such admission be perfected on or before the first day of Michaelmas Term, 1844; and provided also, that until such attorneys and solicitors of the said Courts of the Duchy Chamber of Lancaster at Westminster, or of the said Courts of the Counties Palatine of Lancaster or Durham or either of them, shall be admitted and enrolled in the said High Court of Chancery, or in all or any of the said Courts of Queen's Bench, Common Pleas, or Exchequer at Westminster, it shall be lawful for any attorney or solicitors to act as their agents in any action, suit, or other proceeding in the said Courts of the Duchy Chamber of Lancaster at Westminster, or of the Counties Palatine of Lancaster and Durham."

It is argued, says a correspondent, by some parties, that any attorney of the Court Palatine at Lancaster, admitted previous to 1st January, 1843, can be admitted in the superior courts at any time, (say Jan., 1847,) *without examination*:—they contending that the words "*on or before the 1st day of Michaelmas Term, 1844,*" extends only to the privilege of being considered attorneys and solicitors of the superior courts from the date of their first admission into the Common Pleas at Lancaster. And we are requested to give our opinion whether an attorney of the Common Pleas at Lancaster, admitted before 1st Jan. 1843, can be now admitted an attorney of the Queen's Bench without examination.

The rules of the common law courts of Hilary Term, 1836, and which were renewed last Easter Term, require all persons not admitted in one of those courts to be examined before admission; and unless the exemption be clearly given by the statute, the county palatine applicant must of course be examined. It may be contended that this privilege of admission in the superior court without examination was limited to the 1st day of Michaelmas Term, 1844; but though probably such was the intention of the legislature, the meaning is not clearly expressed. We recollect that this clause was altered in its progress through parliament, and the alteration has probably occasioned the doubt.

2ndly, Can a party only admitted in the Common Pleas at Lancaster practise in the superior courts in the name of a London agent?

The latter part of the clause seems clearly to apply only to such practising by the London agent in the Duchy Chamber and Counties Palatine.

#### THE LAW STUDENT.

[Under this head we shall arrange in future all information that may be deemed *peculiarly* useful to the law student. The whole work, indeed, may be profitably read, from week to week, as well by the Student as the Practitioner; and we believe that both classes will derive great advantage by a regular perusal of our pages. We say thus much, not from any confidence in the worth of our own labours, but because we highly appreciate the learning and ability of our contributors and reporters, and because we are enabled to make selections from various sources of information which cannot fail to be of eminent service to every member of the profession.]

## LAW LECTURES AT THE INNER TEMPLE.

MR. STARKIE, Q. C., the eminent author of the Treatise on Evidence, has delivered two lectures in the Hall of the Inner Temple this term, on Jurisprudence. These lectures, we understand, do not form any part of the general system of law lectures, contemplated by the society of the Inner Temple, in connexion with the other inns of court, but have been undertaken by Mr. Starkie, in virtue of his office of *Lector*—an annual office of the society—which happens this year to be filled by the learned gentleman. Those lectures have not been as numerous attended as it is probable from the deserved celebrity of the lecturer, that they would have been if greater pains had been taken to announce their intended delivery to the society; but the respectable assemblage of benchers and barristers, as well as students, who were collected in the hall upon a very short notice, to greet the lecturer in this volunteer attempt, affords the most conclusive testimony to the deep interest taken in the subject of legal education by all branches of the profession. We understand that Mr. Starkie gives a third lecture on next Thursday night, which concludes the series intended to be delivered by him during the present term.

## PARLIAMENTARY INQUIRY INTO LEGAL EDUCATION.

Our readers, in this department of the work, will be gratified by seeing on record some of the important statements of Mr. Wyse relating to the progress of legal education, comprised in his speech in the House of Commons of the 7th of April:—

After reminding the house of former efforts on his part to promote the object of legal education in Ireland, he pleaded the deep sympathy which he felt at all times in the establishment of a system, truly comprehensive and national, of education for Ireland, and he considered that such would be impossible without embracing amongst its departments one which appeared to him in no particular inferior to any other; for, after all, who was there in that house, or he might say in any part of the community, who did not feel in almost every relation, the all pervading influence of this profession. No age, no class, no period was unaffected by its power. To some the theological instructor, the religious teacher, claimed a higher pre-eminence, and with reason. The physician, too, the preserver of life and health, had also his title to the gratitude and admiration of society; but the lawyer touched on all these, and had a province beside of his own. His moral and intellectual qualifications were felt not for one generation but for many, not

in private only but in public. He was not only the regulator of the domestic concerns of the social intercourse of the individual, but the instrument by which constitutions and laws were upheld or destroyed. He might be the protector or the oppressor of the poor, the sword of the despot or the shield of the innocent. He had great privileges and functions, but also great duties, and it behoved society for its own interest to see that every means were taken for their due performance. He saw no better means to attain this desirable end in this profession than what had been adopted in others. No country had thought it right to allow its religious instructor or its physician to be uneducated. He laid little stress on the usual objections to any interference with existing habits and systems, or rather no system. He admitted that the bar and bench of these countries displayed a series of names for virtue and talents perhaps unequalled in the legal records of Europe. He admitted, too, that necessity was a great teacher, and practice or experience, for most of the ordinary purposes of life, superior to any theory; but he could not understand how experience could be rendered less efficient by having theory for its guide, or how the lawyer could improve by depriving himself of means which were thought and found to be of advantage in disciplining and preparing theologians and physicians for their professions. If they found that they had only done enough in their instance to protect society from incompetence or disqualification, he could not see why they should not be accused of negligence or inconsistency in not extending the same qualifications to the legal profession. In the interest of the bar itself previous discipline and regulated study were scarcely of less importance. How many passed a large proportion of their early years in experimentalizing, in groping about, in attempting to discover, often foiled by many disappointments, the surest way to the great end which they had in view!

Mr. Wyse then cited the opinions of many eminent lawyers, in support of the views which he submitted to the house, and observed that—

Europe, with almost the single exception of England and Ireland, has from the earliest period acted upon them. In almost all the universities of the four or five faculties, jurisprudence usually occupies the second place. In some, such as that of Bologna—which Tiraboschi calls the most renowned and conspicuous amongst the schools of Italy—Bologna gloried most in her jurisprudence. Of all her other departments of science, it was that which rendered her pre-eminent, and sought in the remotest parts of Europe. In early time the *juris-consult* was held in reverence very little inferior to the ecclesiastic. In the new constitutions of Leo XII., for the education of his states, the legal college scarcely holds a secondary place to the theological. The same may be said of the universities of Pisa, Padua, and Pavia. In the latter university the

political sciences connected with law, or dependent on it, are combined. The law course in that institution embraces the following chairs:—1st, statistics; 2dly, natural law; 3dly, criminal law; 4thly, Roman law; 5thly, ecclesiastical law; 6thly, Austrian civil code; 7thly, commercial law; 8thly, political science, constitutions, and penal code; 9thly, judiciary practice.

The university of *France*, which is peculiarly constituted, and differs from that of any other country in Europe, spreading over the whole of the French territory, comprehends nine faculties in law, situated in nine of her principal towns. In all these schools they teach the institutes of Justinian, the civil code, and modes of judicial proceeding. There are also chairs in some, of the commercial code, of the administrative code, or of the *droit administratif*, of the pandects, besides chairs of the history of law, of the natural law, &c. Students who enter, and none are eligible to special official situations who have not passed through the course, are required to attend the three months' courses, and cannot obtain without certificates of diligence, the privilege of examination, or degrees, without which they are not admissible to the bar.

The legal courses in the universities of *Belgium* embrace, besides the institutes, pandects, natural law, &c., both public law (ecclesiastical included), modern civil law, modern criminal law, canon law, practice of the courts, the political history of Europe, statistics, and diplomacy.

But perhaps the most remarkable instance of a special law institution abroad, superior even to several of the great faculties of jurisprudence in the universities of Germany, is the Imperial Law School, established at *St. Petersburg* in the year 1835, on the suggestion of the Prince of Oldenburgh, by an organic statute of the emperor.\* It is destined to fill the ranks of the magistracy and of the jurisconsults with men penetrated by the spirit, the science, and the sanctity of their profession. This school is a true judicial seminary, and no other establishment of Europe can be compared with it in point of magnitude and munificence. To secure a perfect unity of view, the age of admission is fixed at twelve years. The complete course of studies lasts for six years. The early classes embrace the study of the ancient and modern languages, history, geography, mathematics, the physical sciences, natural history. In the fourth class the study of philosophy and history is commenced. In the third, they enter upon a course of Roman law, administrative law, civil law, the history of law, and an extensive course of political economy. The courses of religious instruction and the fine arts are frequented by all the classes in the school. In the last class, the pupils receive instruction in feudal jurisdictions, in procedure, in legal medicine, financial

law, provincial law, law of police, of administration and international law. They are then fit to enter upon their functions.

But even in these countries, where circumstances permitted, the utility and necessity of such special course had been recognised.

In the recommendations of the commissioners issued in 1826 and 1830, on the part of the commission appointed to consider the study of the law in *Edinburgh*, we find it strongly maintained. "The country," say the resolutions, "is deeply interested in the character, the independence, and influence of the advocates to whom the defence of their property and liberties may be intrusted, and it would be vain to hope that the independence and character of the bar can be maintained if the study of law is not conducted on an enlightened and philosophical plan. The great extension of the subject only renders it the more important to provide that the instruction of the students shall not be limited to the details of a technical art, and the philosophy and science of law sacrificed in order to furnish materials for the manual of a practitioner." Accordingly they recommended that the study of law in the University of *Edinburgh* should include attendance for three sessions, embracing the study of the civil law and Scotch law in its several branches, as the qualification for a degree. This report was subscribed by the names of Rosebery, Gordon, Haddington, Aberdeen, Rie, and others which necessarily must command attention from either side of the house.

But in turning to *England* they met admissions indeed of the necessity, but very partial evidences of the zeal with which such a system has been carried into execution. The statute 33d of Henry VIII., indeed, enjoined of those whom it requires "to be *demurrant* and *resiant* in one of the inns of court in *England* studying and practising, or endeavouring themselves, the best they can, to come to the true knowledge of judgment of the said laws." But little seemed to have been done in following up that injunction. They collected from Lord Campbell's "Lives of the Chancellors," (an authority of deserved influence in all inquiries connected with legal history,) that Wolsey, when keeper to the great seal, is reported to have openly complained "That the lawyers who practised before him were grossly ignorant of the civil law, and the principles of general jurisprudence, and to remedy an evil which troubled the stream of justice at the fountain-head, he, with his usual magnificence of conception, projected an institution, to be founded in London, for the systematic study of all branches of the law. He even furnished an architectural model of the building, which was considered a masterpiece, and remained long after his death as a curiosity in the palace at Greenwich. Such an institution (adds the noble and learned lord, from whose writings I quote) is still a desideratum in *England*; for, with splendid exceptions, it must be admitted that *English*

\* See an account of this institution at page 101, ante.

barristers, though very clever practitioners, are not such able jurists as are to be found in other countries, where law is systematically studied as a science." Milton and Bacon each complained of the same deficiencies; but they found by references to different orders established in the time of Philip and Mary, that moot cases, and pleadings, and points, were all prescribed as portions of the exercises to take place in the inns of court. That other orders were established by command of Queen Elizabeth, and the justices of the Queen's Bench and Common Pleas:—"That moots and other exercises of learning be a condition for admission, and also for a continuance as either barrister or pleader." The preamble to orders made by the judges and barons for enforcing education at all the inns of court in the 33d year of Elizabeth, 1591, laments that there has been interruption to these studies, which, if it should be permitted, they add—"would be almost an utter overthrow to the learning and study of the law, and, consequently, an intolerable mischief to the commonwealth of this realm." The preamble leads to several rules, under the authority of the judges, for the future facilitating of the acquirement of legal knowledge.

The honourable member then described the efforts which had been made in Ireland by Mr. Tristram Kennedy, for establishing the Dublin Law Institute, and contended

That a school or college of law would not only benefit the bar, but be an advantage to society. It would infuse into what must often be a course of mere technicalities, something of a lofty and more philosophical spirit. It would not only produce lawyers, but he hoped legislators, for every one in that house must be conscious how much the want was felt of opportunity of any real acquaintance with the great principles of jurisprudence, especially in their direct bearing upon those functions which he had afterwards to exercise, whether in the senate, whether as an ambassador from his country, or as a negotiator for its interests. Philosophic study and a large and embracing spirit was its first essential. In all this we were deficient. Well known through Europe as were all our talents, we not unfrequently wanted the ordinary elements of instruction in these several branches. We should also remember the lawyer was essentially the manufacturer of our Acts of Parliament. Upon his knowledge, experience, and intelligence depended the accuracy and facility of application, but still more the clearness, of our legislation. Without opportunities for the cultivation of these qualities, we should long continue to lament the defects to which we were at present subject.

Although the house was "counted out" at the conclusion of Mr. Wyse's speech, the government on the following day acceded to a resolution of the house—"To inquire into the present state of legal education in Ireland, and

the means for its further improvement and extension."

The inquiry, we are informed, has since been extended to England, and the following are the committee nominated:—

Mr. Wyse, Mr. O'Connell, Sir Thos. Wilde, Mr. Bingham Baring, Mr. Rutherford, Mr. Walpole, Sir Wm. Somerville, Mr. Watson, Sir Edmund Hayes, Mr. Geo. Hamilton, Mr. Christie, Mr. Milnes, Mr. M'Carthy, Mr. Godson, and Mr. Elphinstone. Power to send for persons, papers, and records. Five to be a quorum.

### TRINITY TERM EXAMINATION.

THIS examination took place on Thursday the 4th instant, when Master Griffith presided. The other examiners were:—Mr. Pickering, Mr. Metcalfe, Mr. Clarke, and Mr. Whitmore. The number of candidates examined was 87—being about one-half the number reported in the newspapers. The mistake arises from not deducting the number previously examined. Of the 87 thus examined, 81 were passed and 6 postponed.

### HOLIDAY AT THE CHANCERY OFFICES.

THE Lord Chancellor, pursuant to the 10th of the General Orders of 8th May, 1845, has directed that the several offices of the court be closed on Tuesday, the 9th day of June, being the day appointed for the celebration of the anniversary of her Majesty's birth-day.

### ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS,

#### Common Law Courts.

#### I. CONSTRUCTION OF STATUTES.

AGENT.

See *Bill of Lading*.

AGREEMENT.

See *Stamp, 3*.

ANNUITY.

See *Legacy Duty*.

APPEAL.

*Notice.—Fraction of a day.*—A local act required seven days' notice "at least" to be given by an appellant, of his intention to bring an appeal. Notice was served on the 31st of December. The sessions commenced on the 7th January, on which day appeals were

entered, but not heard till a subsequent day: *Held*, 1st, that the notice was insufficient, as both the day of giving the notice and the day of holding the sessions must be excluded; and that the day of bringing an appeal is the day on which it is entered, not that on which it is heard: 2ndly, that the fraction of a day cannot be taken into consideration in such a case.

*Reg. v. Justices of Middlesex*, 3 D. & L. 109.

Cases cited in the judgment: *Zouch v. Empey*, 4 B. & A. 522; *Reg. v. Justices of Shropshire*, 8 A. & E. 175; *Mitchell v. Foster*, 12 A. & E. 472, S. C. 4 P. & D. 150.

#### ARREST.

See *Protection from*.

#### ASSESSMENT.

See *Poor Law*; *Railway*, 2.

#### ASSIGNMENT.

See *Frauds*, 2.

#### BANKRUPT.

1. *Uncertificated*.—*After acquired property*.—*Pleading*.—Under stat. 6 G. 4, c. 16, ss. 63, 127, and stat. 1 & 2 W. 4, c. 56, s. 25, an uncertificated bankrupt may acquire property, and contract, for the benefit of his assignees, and may sue in respect of such property or contract. And a plea showing the bankruptcy, &c. constitutes no defence, unless there be an allegation that the assignees have interfered. The same is true in the case of a party who has twice been bankrupt and obtained his certificate, but has not paid fifteen shillings in the pound, in respect of property acquired since the certificate: *Held*, by the Court of Exchequer Chamber, reversing the judgment of the Court of Q. B.

By the Court of Q. B.: *de injurid* may be replied, in an action by the indorsee of a bill of exchange against the acceptor, to a plea that the bill was accepted for the accommodation of the drawer, to be deposited with R. as a collateral security from the drawer to R.; that R. took it on those terms; that the drawer before maturity, paid R. part of such debt, and tendered the residue, which R. refused to accept; and that R. afterwards indorsed the bill to plaintiff, in order that plaintiff, conspiring and colluding with R. to defraud defendant, might recover as a trustee for R.; such plea being in excuse and not in discharge. *Herbert v. Sayer*, 5 Q. B. 965.

Case cited in the judgment: *Salter v. Purchell*, 1 Q. B. 209; *Humphreys v. O'Connell*, 7 M. & W. 370; *Mitchell v. Cragg*, 10 M. & W. 367; *Isaac v. Farrar*, 1 M. & W. 65; S. C. *Tyrwh. & Gr.* 281; *Young v. Rishworth*, 8 A. & E. 470; *Fyson v. Chambers*, 9 M. & W. 460, 467; *Kitchen v. Bartsch*, 7 East, 53; *Fowler v. Down*, 1 Bos. & Pul. 44; *Ashley v. Kell*, 2 Str. 1207; *Webb v. Fox*, 7 T. R. 391; *Laroche v. Wakeman*, 1 Peake's N. P. C. 140; *Cumming v. Roebuck*, Holt's N. P. C. 172; *Ex parte Cartwright*, 2 Rose's Ca. B. 230; *Drayton v. Dale*, 2 B. & C. 293; *Leach v. Thompson*, 1 Show. 296, 300; 3 Lev. 284; *Clark v. Calvert*, 8 Taunt. 742.

2. *Reputed ownership*.—*Assignment after act of bankruptcy*.—Under stat. 6 G. 4, c. 16, s. 72, which empowers the commissioners in bankruptcy to dispose of goods being in the possession, order, or disposition of the bankrupt as reputed owner "at the time he becomes bankrupt," the time meant is that of committing the act of bankruptcy, not the time when the fiat issued; stat. 2 & 3 Vict. c. 29, s. 1, making no alteration in this respect.

A trader assigned his effects to a trustee, thereby committing an act of bankruptcy. Afterwards a creditor, ignorant of the act of bankruptcy, took in execution the trader's goods comprised in the assignment. The trustee paid off the execution, and took an assignment of the goods from the sheriff.

A fiat in bankruptcy having afterwards issued against the trader: *Held*, that although the levy made by the execution creditor might have been protected by stat. 6 G. 4, c. 16, s. 81, or 2 & 3 Vict. c. 29, the party who had become assignee of the sheriff with knowledge of the act of bankruptcy, could not avail himself of that protection, and that the assignees in the bankruptcy might bring trover against him for the goods. *Fawcett v. Fearn*, 6 Q. B. 20.

Cases cited in the judgment: *Smith v. Topping*, 5 B. & Ad. 674; *Lyon v. Weldon*, 2 Bing. 334.

And see *Ramsay v. Eaton*, 10 M. & W. 22.

3. *Notice of disputing petitioning creditor's debt*.—Under 6 G. 4, c. 16, s. 90, a defendant, who is assignee of a bankrupt, may prove the act of bankruptcy at *nisi prius* by merely putting in the proceedings, if the opposite party has given no notice to prove the petitioning creditor's debt, &c., and if it be clear that such opposite party must have known that the bankruptcy would be relied on by defendant, though defendant is not named assignee on the record. *Fawcett v. Fearn*, 6 Q. B. 25.

Case cited in the judgment: *Doe d. Mawson v. Liston*, 4 Taunt. 741.

4. *Competency of witness*.—*Notice of act of bankruptcy*.—A bankrupt is a competent witness, in an action by his assignees against parties claiming under an execution, to prove notice to them of a prior act of bankruptcy.

*Semble*, also, he is competent, since 6 & 7 Vict. c. 85, to prove the petitioning creditor's debt, or act of bankruptcy, or any fact which tends to support the commission.

A notice by a bankrupt to an execution creditor, that "he had committed several acts of bankruptcy," is a sufficient notice of a prior act of bankruptcy, within the 2 & 3 Vict. c. 29; the notice need not state the nature or particulars of any act of bankruptcy. *Udal v. Walton*, 14 M. & W. 254.

Cases cited in the judgment: *Hocking v. Acraman*, 12 M. & W. 170; *Conway v. Nall*, 14 Law J. (N. S.) C. P. 165.

5. *Payments and receipts after bankruptcy*.—A trader committed a secret act of bankruptcy, by leaving his house; but, before he left, desired the defendant, his foreman, who had been



accustomed to manage his business for him, to carry it on in his absence. The defendant did so accordingly, and received large sums of money for debts due to the bankrupt, and for goods sold after the act of bankruptcy. He also made several *bond fide* payments; some to creditors of the bankrupt, for the expenses of house-keeping, and retained some for wages due to himself. The monies were received and the payments made without notice of the act of bankruptcy. An action having been brought by the assignees to recover the money so received, as money had and received to their use, the defendant pleaded never indebted, and a set off: *Held*, that the defendant was liable to the assignees for all the money received by him after the act of bankruptcy, and that he was not entitled to set off any of the payments made by him.

*Semble*, that the defendant might have protected himself by a special plea, as to the payments and disbursements made by him without notice of the act of bankruptcy, under 6 G. 4, c. 16, s. 82, and 2 & 3 Vict. c. 29, s. 1.

*Quere*, whether the plea of not guilty in trover does not put in issue the wrongful nature of the conversion. *Kynaston v. Crouch*, 14 M. & W. 266.

Cases cited by the court: *Cole v. Wright*, 4 Taunt. 198; *Stephens v. Elwall*, 4 M. & Selw. 259; *Tope v. Hockin*, 7 B. & C. 110; *Stancliffe v. Hardwick* 2 C. M. & R. 1.

6. *Trespass. — Attorney suing out ca. sa. against person having protection.* — An action of trespass is not maintainable against the plaintiff in an action, or his attorney, for suing out an execution, and causing the defendant to be arrested under it, the defendant having at the time an order for protection from arrest under the Bankruptcy Act, 5 & 6 Vict. c. 116, s. 4, of which the plaintiff had no notice. *Yearsley v. Heane*, 14 M. & W. 322.

Cases cited by the court: *Tarleton v. Fisher*, 2 Doug. 67; *Lloyd v. Wood*, 5 B. & Ald. 328.

And see *Bill of Lading; Distress.*

#### BASTARDY.

1. *Jurisdiction of justices.* — An order in bastardy under the 7 & 8 Vict. c. 101, s. 3, stated that application had been made and summons granted by a justice of the peace "usually acting in" the division in which the mother resided: *Held*, that under the 8 Vict. c. 10, the word "in" was to be taken to be synonymous with the word "for" contained in the forms given in the schedule to that act; and that consequently the order showed jurisdiction on the part of the magistrate granting the summons. *Reg. v. Milner*, 3 D. & L. 128.

2. Where the sessions had refused, on the application of the guardians, to make an order of affiliation under the 2 & 3 Vict. c. 85: *Held*, that they were, nevertheless, bound to entertain the complaint of the mother under the 7 & 8 Vict. c. 101, if made within the time limited by that act. *Reg. v. Walker*, 3 D. & L. 131.

#### BILL OF LADING.

*Delivery order. — Stoppage in transitu. — Bankruptcy. — Agent. — Factor's Act*, 6 G. 4, c. 94, s. 2. — *A. of London*, had ordered beans of *B. & C. of Leghorn*, through *D.*, their agent. *B. & C.* shipped more than the quantity ordered, and drew two bills upon *A.*, one for the quantity ordered, and the other for the residue; and they transmitted those bills to *A.*, through *D.*, with a letter of advice and an indorsed bill of lading for the whole cargo. The beans were shipped in 3,932 sacks. *A.* accepted the bill for the beans ordered, but declined to take the residue, (amounting to 1442½ sacks,) or to accept the bill drawn against them. *D.* consented to take the residue of the beans, and *A.* thereupon wrote a letter to him acknowledging such residue to be his, and inclosed an order to the captain to deliver to the bearer 1442½ sacks. *D.* thereupon handed over the bill of lading to *A.* *D.* accepted the bill drawn against the residue of the cargo, and paid it at a maturity. Before the arrival of the ship, *D.* sold the residue to *E.*, who accepted a bill for the amount drawn by *B.*, who happened to be in *London*, and *D.* handed to *E.* *A.*'s letter and delivery order. *E.* afterwards applied to *F.* for an advance of cash, and handed him over as a security (*inter alia*) such letter and delivery order; and *F.* gave his acceptance to *E.* for the amount of cash required; which acceptance was honoured at maturity. Before *E.*'s acceptance became due, and before the arrival of the ship, *E.* stopped payment. When the ship arrived the portion of the cargo for which *A.* had accepted the bill was delivered to him.

*Held*, that *D.* might exercise the right of stoppage *in transitu* as to the residue.

*Held*, also, that the delivery order given by *A.* was not equivalent to a bill of lading.

*Held*, also, that *E.* was not a person entrusted with a delivery order within the meaning of the 6 G. 4, c. 94, s. 2. *Jenkyns v. Osborne*, 7 M. & G. 678.

#### CERTIORARI.

*Local Act.* — A local act, the 6 & 7 Vict. c. 76, empowered certain commissioners to make an assessment for the purposes mentioned in the act. The act contained several clauses relating to proceedings before magistrates to enforce the payment of the assessment; and by a subsequent clause, the 158th, provided "that no proceeding in pursuance of this act, &c., shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts." The power to appeal to the quarter sessions was given by the 161st section: *Held*, that the clause taking away the certiorari had a general application to all proceedings under the act, and therefore applied to the case of an appeal under the 161st section. *Reg. v. Justices of Lindsey*, 3 D. & L. 101.

#### COPYRIGHT.

*Rights of Foreign Author. — Evidence.* — A foreign author, residing abroad, who composes

and publishes his work abroad, has not at common law, or under the stat. 8 Anne, c. 19, and 54 G. 3, c. 136, any copyright in this country. Therefore, a person to whom he transfers abroad, by an instrument not under seal, but which is valid according to the law of that country, the copyright of the work in England, has no right of action against a British subject who afterwards published the work in England. *Chappell v. Purday*, 14 M. & W. 303.

Cases cited in the judgment: *Donaldson v. Beckett*, 4 Burr. 2408; 2 Bro. P. C. 129; *Millar v. Taylor*, 4 Burr. 2303; *Bentley v. Foster*, 10 Sim. 329; *D'Almaine v. Boosey*, 1 Y. & C. 298; *Delandre v. Shaw*, 2 Sim. 237; *Page v. Townsend*, 5 Sim. 395; *Clementi v. Walker*, 2 B. & Cr. 861.

#### CORONER.

**Jurisdiction.**—If a person is found drowned in a river within the concurrent jurisdiction (exclusive of all others) of the coroner for a city and the admiralty, and the body is taken to a place on shore beyond the city limits, the coroner and jury of the city cannot view the body at such place for the purpose of an inquest; and an inquisition taken on such view will be quashed. So held on an inquisition taken after stat. 6 & 7 Vict. c. 12. *Queen v. Hinde*, 5 Q. B. 944. See *Regina v. Great Western Railway Company*, 3 Q. B. 333; *Re v. Ferrand*, 3 B. & Ald. 260.

#### CORPORATION.

**Town clerk.**—The stat. 5 & 6 W. 4, c. 76, s. 60, imposes certain duties on the town clerk of a borough, and in cases of neglect or refusal two justices of the peace have power to determine the matter in a summary way; provided always, that nothing in the act shall prevent or abridge any remedy by action against any person so offending, but such person shall not be sued by action and proceeded against in a summary way for the same cause.

**Held**, that an action on the case would lie at the suit of the corporation against the town clerk for refusing or neglecting to perform the duties imposed on him by the 60th section; the summary remedy before magistrates not being co-extensive with the injury. *Mayor of Lichfield v. Simpson*, 31 L. O. 58.

#### COVENANT.

**Non performance, when excused.**—Land was demised to trustees for parish R., they covenanting to build a workhouse thereon, and to use, occupy, possess, and enjoy the premises for the sole use, maintenance, and support of the poor of R., and not to convert the building or the land, or employ the profits thereof, to any other use, intent, or purpose whatsoever. Provision for re-entry on breach of the covenant.

The house was built, and together with the land, used agreeably to the covenant. Afterwards stat. 4 & 5 W. 4, c. 76, passed; and the poor law commissioners incorporated parish R. in a union, and removed all the paupers to the union workhouse. The workhouse of R. became uninhabited and was locked up, and

the land was let at a rack rent, which was applied in aid of the poor rates. On ejectment brought (three years afterwards) for breach of the covenant,

**Held**, that no breach of the covenant appeared; but *Semble*, that a breach caused by the compulsory operation of the statute would have been thereby excused. *Doe d. Lord Anglesea v. Churchwardens of Rugeley*, 6 Q. B. 107.

Case cited in the judgment: *Brewster v. Kitchell*, 1 Salk. 198.

And see Bac. ab. tit. *Conditions*; Com. Dig. tit. *Conditions*.

#### DEBTOR.

**Personal service of notice not requisite.**—Personal service on the plaintiff of notice of a motion for the discharge of an insolvent debtor under the 48 G. 3, c. 123, s. 1, is not requisite. *Bull v. Brownlow*, 7 M. & G. 526.

#### DISORDERLY HOUSE.

**Meaning of word "conviction."**—*Demand under statute.*—*Action against "overseers."*—By a statute, (25 G. 2, c. 36, s. 5,) if two inhabitants of any parish give notice to a constable of any person keeping a disorderly house in such parish, the constable is to go with such inhabitants to a justice of the peace, and upon their entering into a recognizance to produce material evidence against such person, is to enter into a recognizance to prosecute with effect such person at the next sessions; and such constable is to be allowed all reasonable expenses of such prosecution, to be ascertained by two justices, and is to be paid the same by the overseers of such parish; and in case such person be convicted, the overseers are forthwith to pay 10l. to each of such inhabitants; and in case such overseers neglect or refuse to pay, upon demand, the said sums of 10l. and 10l., such overseers and each of them are to forfeit to the person entitled to the same, double the sum so refused or neglected to be paid.

In an action by A., and inhabitant of X., against C. & D., as overseers, to recover a penalty under this statute, it appeared that A. and another inhabitant, B., had given the requisite notices with respect to a disorderly house kept by E., and that E. was prosecuted and found guilty, while F. & G. were overseers of the parish; and that after C. & D. came into office E. was called up for judgment and sentenced. A. thereupon demanded in writing the sum of 10l. from C. & D., but they refused to pay it. There were churchwardens in the parish, but no demand had been made upon them.

**Held**, that E. was not to be considered as convicted until the judgment of the court upon the indictment against him was pronounced; and therefore that the demand for the reward was properly made upon, and the action rightly brought against C. & D., and that their predecessors F. & G. were not liable.

**Held**, also, that no objection having been taken to the form of the demand, either at the trial or on obtaining a rule nisi to enter a non-

suit, it was too late to do so upon the argument in support of such rule.

*Held*, also, that it was not necessary such demand should be in writing.

*Held*, also, that it was not necessary to make the demand upon the churchwardens as well as upon *C. & D.*, the overseers, or to join the former in the action, and that the action was well brought against the latter, upon whom the demand was made.

*Quare*, whether churchwardens are included in the term "overseers" in the statute, so as to be liable to be called upon to pay the reward. The defendants having made an admission, for the purpose of the cause, that they were "overseers" at the time the demand in question was made: *Seem*, that they were not thereby precluded from contending that the churchwardens were also overseers, and should have been joined in the demand. *Burgess v. Boatfleur*, 7 M. & W. 481.

Cases cited in the judgment: *Sutton v. Bishop*, 4 Burr. 2283; 1 W. Bl. 665; *Regina v. Justices of Cambridgeshire*, 7 A. & E. 480.

#### DISTRESS.

2 & 3 Vict. c. 29.—*What notice of an act of bankruptcy.*—On the 29th of December, 1842, *A.* distrained for 120*l.*, for rent due to him from *B.* at Michaelmas, the goods of *B.* being then in possession of one *C.*, to whom they had been conveyed by deed on the 13th of December, in trust for *B.*'s creditors. On the 3rd of January, 1843, it was agreed between *A. & C.* that the rent should be paid, *A.* consenting to forego the quarter's rent due at Christmas. The goods were accordingly appraised and condemned at 136*l.*, being the amount of the rent and expenses; and that sum was handed over to *A.* On the 9th of January, a fiat issued against *B.*, the act of bankruptcy being the execution of the deed:—*Held*, that so much of the sum so paid to *A.*, as exceeded a year's rent, was not money received to the use of the assignees. *Quere*, whether a "distress" is a "transaction" within the 2 & 3 Vict. c. 29; and, if so, whether a notice of an act of bankruptcy given to the broker's man could be sufficient to bind the landlord. Notice that a party has executed a deed conveying all his property for the benefit of his creditors, is a notice of an act of bankruptcy. *Lackington v. Elliott*, 7 M. & G. 538.

Cases cited in the judgment: *Whitmore v. Robertson*, 8 M. & W. 463; *Skey v. Carter*, 11 M. & W. 571.

#### FACTORS' ACT.

See *Bill of Lading*.

#### FRAUDS.

*Acceptance.*—The defendant, a builder at Wallingford, gave the plaintiff, a timber merchant in London, a verbal order for timber, directing it to be sent to the Paddington station of the Great Western Railway, to be forwarded to him at Wallingford, as had been the practice between the parties on previous dealings between them. The timber was accordingly sent, and arrived at the Wallingford station on the

19th of April, and the defendant was informed by a railway clerk of its arrival, upon which he said he would not take it. An invoice was sent a few days after, which the defendant received and kept, without making any communication to the plaintiff himself until the 28th of May, when he informed the plaintiff that he declined taking the timber. *Held*, that although there might be a scintilla of evidence for the giving of an acceptance of the timber within the Statute of Frauds, yet there was not sufficient to warrant them in finding that there was such an acceptance, and the court set aside a verdict found for the plaintiff as not warranted by the evidence. *Norman v. Phillips*, 14 M. & W. 277.

Cases cited by the court: *Johnson v. Dodgson*, 2 M. & W. 653; *Bushel v. Wheeler*, 8 Jurist, 532.

2. *Frauds, operation of parol assignment of term of years.*—*Seem*, that an agreement by a lessee for the transfer of his interest in the term, (not exceeding three years,) which, not being in writing, is invalid as an assignment by the Statute of Frauds, cannot operate as an underlease. *Barrett v. Rolph*, 14 M. & W. 348.

#### FRIENDLY SOCIETIES.

The statute 59 Geo. 3, c. 128, s. 1, enacts, "that no society hereafter to be formed shall be entitled to the benefits or subject to the provisions of the said acts, unless such society shall have been constituted under the authority and according to the provisions of this act." *Held*, that a society which had been formed for a considerable time before the act passed, but the rules and regulations of which society had not been enrolled by the quarter sessions, pursuant to the directions of the statute, did not come within the protection of that statute. *Parnell v. Smith*, 31 L. O. 272.

#### HABEAS CORPUS.

1. *Sufficiency of Warrant.*—The return to a habeas corpus stated that the prisoner was committed for three months by warrant of a justice, (set forth in the return), reciting a conviction by the justice, on which the warrant purported to proceed, for an offence under stat. 4 G. 4, c. 34, s. 3. The recited conviction was on the face of it bad. The return then stated that a week after such commitment, the prisoner being still in custody, the same justice delivered to the gaoler another warrant of commitment, reciting, and grounded upon a conviction of the same date as the first, by the same justice, setting forth the same offence, and imposing the same punishment. In this conviction no material defect appeared. *Held*, that the prisoner was not entitled to be discharged, the return showing a good warrant under which he was in custody.

*Queen v. Richards*, 5 Q. B. 926.

*Deserter.*—*Secretary at war.*—*Service of notice.*—Upon habeas corpus to discharge a prisoner out of custody who has been committed by virtue of an order of magistrates, under the 8 Vict. c. 8, s. 25, (the Mutiny Act,) for as-

sisting to conceal a deserter; notice of the rule should be served upon the secretary at war. *Gale, ex parte*, 3 D. & L. 114.

## HIGHWAY ACT.

1. Words "heretofore" "usually rated."—In the Highway Act, 5 & 6 W. 4, c. 50, s. 27, which directs the surveyor to rate all property then liable to be rated to the poor, provided that the same rate shall also extend to such woods, mines, &c., as have heretofore been usually rated to the highways, the words "usually rated" refer, not to legal rateability, but to rating in point of fact, and to the practice of rating in the particular parish, not in the county generally.

On appeal against a surveyor's rate on timber woods, the sessions found for the appellant, subject to a case, which stated that the woods were not liable to poor rate; that from 1809 down to the passing of stat. 5 & 6 W. 4, c. 50, they had not been rated to the highways; and that timber woods of a like description had always been rated to the highways in the majority of parishes in the county and neighbourhood, but in some they had not been so rated since 1809.

*Held*, that the appellant's woods were not shown to be chargeable under sect. 27. *Queen v. Rose*, 6 Q. B. 153.

2. Power of surveyors to enter lands to make drains.—*Tender of amends*.—Amount how ascertained.—By a highway act, (5 & 6 W. 4, c. 50, s. 67,) surveyors, or way-wardens, are empowered to make drains on lands adjoining any highway, upon paying the owner for the damages sustained thereby, to be settled and paid as the damages for getting materials in inclosed lands are therein directed to be settled and paid. The power of getting such materials is given by the act (sect. 54,) the said surveyor making such satisfaction for the materials, and also for the damage done to such lands as shall be settled and ascertained by order of the justices at a special session for the highways. The act directs (sect. 109) that no action shall be commenced against any person for anything done in pursuance of the act, until twenty-one days' notice thereof has been given, nor after sufficient satisfaction or tender of satisfaction has been made; and in case of an action being brought, if the matter appears to have been done under the act, or if it appears that such action was brought before twenty-one days' notice thereof, or that sufficient satisfaction was made or tendered, the jury shall find a verdict for the defendant. *Held*, that tender of satisfaction for damage done in making a drain was not a condition precedent to the right of entry on the land.

*Held*, also, that the amount of satisfaction could only be ascertained by the justices at a special session.

*Held*, also, (per *Tindal, C. J.*.) that assuming it to be the duty of the way-warden to apply at a special session for the purpose, there was no time limited for his doing so; and that the notice of action would not create such a limitation.

*Held*, also, (per *Coltman, J.*.) that tender of satisfaction before action brought is not required in cases where the way-warden has complied with the provisions of the act. *Peters v. Clarkson*, 7 M. & G. 548.

Cases cited in the judgment: *Boyfield v. Porter*, 13 East, 200; *Six Carpenters' Case*, 8 Co. Rep. 146, a.; *Lister v. Lobley*, 7 A. & E. 124.

## INCLOSURE ACT.

*Construction*.—Where an inclosure act directed that the commissioners should set out and allot a certain portion of the common lands for the getting of stone, gravel, and other materials, for the repairs of the highways and other roads, to be set out under the act, and for the use of the inhabitants within the parish. *Held*, that this did not authorize the inhabitants to take such materials for their private purposes, but only for the repairs of the roads. *Rylatt v. Marfleet*, 14 M. & W. 233.

## INTERPLEADER.

A defendant who had purchased certain goods received notice from a third party that the goods belonged to him. The vendor sued the defendant for the price of the goods, and the claimant sued the defendant in trover. *Held*, that this was not a case in which the defendant could be relieved under the Interpleader Act. *Slaney v. Sidney*, 31 L. O. 202.

## JURISDICTION OF JUSTICES.

*See Bastardy; Coroner; Poor Law; Protection from arrest.*

## LANDLORD AND TENANT.

*See Distress.*

## LEASE.

*See Fraud, 2.*

## LEGACY DUTY.

*Annuity devised under power*.—A., by deed dated in 1802, conveyed certain lands to trustees, to the use of himself for life, remainder to B., his son, for life, with remainder over. The deed contained a proviso that it should be lawful for B., by his last will, to limit and appoint to the use of himself, or any other person or persons, any annual sum or sums of money not exceeding the yearly sum of 700*l.*, to be charged upon and payable out of the lands included in the deed, to commence from the death of B., and to be either perpetual or in fee, or payable for such times and in such manner in all respects as B. should think fit. B., by his will, by virtue of this power, appointed an annuity of 700*l.* a year to C. for her life, charged upon and payable out of the said land. *Held*, that legacy duty was not payable in respect of such annuity. *Attorney-General v. Marquis of Hertford*, 14 M. & W. 284.

## LOCAL ACT.

*See Certiorari; Rateability.*

## MANDAMUS.

*See Railway.*

## MARRIED WOMAN.

*Commission.—Identity.*—3 & 4 W. 4, c. 74. —It is no objection to the issuing of a commission to take the acknowledgment of a feme covert resident beyond the seas, under stat. 3 & 4 W. 4, c. 74, s. 83, that her christian name is unknown; but when the commission is returned the court will require strict proof of her identity. *Atherton, wife of, In re*, 3 D. & L. 26.

And see *Uses, Statute of*.

## MORTGAGE.

See *Stamp*, 4.

## NOTICE.

See *Appeal; Debtor; Distress; Paving Act*. The fraction of a day cannot be taken into consideration. *Reg. v. Justices of Middlesex*, 3 D. & L. 109.

## OVERSEERS.

See *Disorderly House*.

## QUARTER SESSIONS.

See *Bastardy*, 2.

## PAVING ACT.

*License to erect scaffolding, &c.*—A surveyor appointed under the Metropolitan Paving Act, 57 Geo. 3, c. 29, has no right, under the 75th section of the act, to remove a ladder placed against a house for the purpose of whitewashing it, for that section applies only to the erection of boards or scaffoldings, or to the placing of posts, bars, rails, or boards, by which an inclosure is made.

A licensee granted by the surveyor under that section, to erect a board or scaffolding, &c., on the footway of No. 14, Porter Street, was held not to authorize the licensee to erect one in another street or court, although it formed one of the sides of the house in Porter Street. *Davey v. Warne*, 14 M. & W. 199. See *Wagstaffe v. Sharpe*, 3 M. & W. 521; *Wills v. Langridge*, 5 A. & E. 383; 6 Nev. & M. 831.

## PIER BONDS.

See *Ports' Improvement Act*.

## POOR LAW.

*Jurisdiction of Creditor.—Assessment for relief of poor.*—The Poor Law Commissioners caused an auditor to be appointed under stat. 4 & 5 W. 4, c. 76, s. 46, to credit the accounts of a union and the several parishes therein, to examine whether the expenditure was lawful, to strike out payments and charges not authorized by some provision of the law, or order of the commissioners, and to see that the accounts were properly stated, with vouchers. A district within the union had already auditors under a local act, (6 G. 4, c. clxxv.) which provided for the maintenance of the poor and regulation of the nightly watch. Their duty under the act was, to audit the accounts of the directors of the poor, which the directors were required to produce, with vouchers; no power of disallowing items was given to the auditors; but it was enacted that, if they disapproved of any part of

the accounts, it should be lawful for them to appeal to the quarter sessions, entering into recognizance to pay costs, if awarded against them; and the sessions were empowered to award costs to the appellant or the party appealed against.

*Held*, that the directors, though they had accounted to their own auditors according to the local act, were not thereby exempted from accounting to the union auditor under stat. 4 & 5 W. 4, c. 76, s. 47.

The officers accounting for the receipt and expenditure of the poor rate to an auditor appointed by direction of the poor law commissioners must account for all sums collected under the denomination of poor rate, and expended for any purposes, (as watching, police, &c.,) to which, by local or general acts, the poor rate is applicable; not for those sums only which are raised and laid out strictly for the relief and management of the poor. *Reg. v. Governors of St. Andrew's*, 6 Q. B. 78.

Case cited in the judgment: *Reg. v. Poor Law Commissioners*, 11 A. & E. 558.

And see *Railway*, 2.

## PORTS IMPROVEMENT ACT.

*Broker.—Contract.—Pier bonds.—Interest.—Laches.*—Under a port improvement act, commissioners were empowered to raise money upon instruments known as old pier bonds. These bonds were for 100l. each, and were issued at 5 per cent interest, with the exception of eight; which were granted in the same form, but upon which a memorandum was indorsed, before the execution of the bonds, whereby the obligee agreed to accept 4 per cent, provided the payments were regularly made. A., being holder of these eight bonds, was applied to by C., a broker employed to purchase such securities for B., and A. agreed to sell to B. "eight old pier bonds for 100l. each," nothing being said as to the rate of interest. The bonds were left with C. for the purpose of transfer, and remained with him two days. C. prepared a transfer and got it registered, and then discovered that interest was, by the memorandum, limited to 4 per cent, upon which he immediately repudiated them.

In assumpsit by A. against B. for not accepting and paying for the bonds, the jury found, "that the bargain between C. and B. was for old pier bonds of the usual sort, at 5 per cent, but that A. only intended to sell bonds at 4 per cent."

*Held*, that the verdict was thereupon properly entered for B. *Keele v. Wheeler*, 7 M. & G. 665.

Cases cited in the judgment: *Burgh v. Preston*, 8 T. R. 483.

## PRISONER.

*Supersedas: stat. 1 & 2 Vict. c. 110, s. 41.* A prisoner once entitled to his discharge, is always so.

The statute 1 & 2 Vict. c. 110, s. 41, enacts, that "no prisoner, whose estate shall, by an order made under the act, be vested in the

provisional assignee, shall, after the making of such order, be discharged out of custody, as to any action, &c., for any debt, &c., with respect to which an adjudication can, under the provisions of the act, be made by virtue of any *supersedeas*, &c., for want of the plaintiff's proceeding thereon." *Held*, that this section does not apply to a prisoner who before the date of an order was entitled to his discharge by reason of the plaintiff's having failed to declare within a year. *Hallett v. Creswell*, 31 L. O. 369.

PROTECTION FROM ARREST.

*Commission of bankruptcy.*—A temporary and limited protection from arrest, granted by a commissioner of the court of bankruptcy, under the stat. 7 & 8 Vict. c. 70, s. 7, upon the examination of a debtor's petition, cannot be renewed or extended by the commissioner. *Mazeman v. Davis*, 3 D. & L. 145.

RAILWAY.

1. *Compensation.*—*Mandamus.*—Stat. 6 & 7. W. 4, c. lxxx., incorporating the Hull and Selby Railway Company, and empowering them to build a bridge over the river Ouse, recited that the building of such bridge might diminish the tolls received at a neighbouring bridge over the same river, belonging to another company. It therefore enacted, that, if in the first three years after the opening of the railway, there should be an annual decrease in the tolls of the last-mentioned bridge, as compared with the tolls during the three preceding years, the railway company should forthwith pay the bridge company a sum equal to ten years' purchase of such annual decrease, taken upon an average of the three years in which it occurred. The decrease took place, and the compensation was claimed. *Held*, that debt lay against the company for the amount, and that a *mandamus* to pay was not a more effectual remedy, and ought not to be granted. *Queen v. Hull and Selby Railway Company*, 6 Q. B. 70.

2. *Rating to the poor.*—*Principle of assessment.*—The Great Western Railway Company were occupiers of a railway, their property, and constructed by them, and of branch railways which they rented; and they used the several lines as carriers for hire, working the whole as one concern. In the parish of Y., through which the main line passed, they were rated for the railway as follows:—The gross receipts on the several railways were added together, and the total divided by the number of miles in all the railways. The expenses on all, allowable as deductions from poor rate, were added together and divided in the same manner. The expenses on the number of miles in T., the calculation for each single mile being as above, were then subtracted from the receipts thereon, and the assessment was made on the residue, with an allowance for interest on the plant or moveable stock, and for tenants' profits, including profits of trade. On appeal against the rate, further deductions were claimed as follows; and the sessions stated a case for the opinion of this court on the legality of them:—

1. For stations and other buildings appurtenant to, and necessary for the profitable enjoyment of, the railway, but rated or rateable separately from it, and in other parishes than T., *Held*, allowable.

2. Allowance having been made in the rate for "maintenance of way," a further deduction was claimed for depreciation and wear and tear of rails and sleepers, being the solid timber and iron work of the principal line. The renewal of these had been paid for out of the company's capital, not their revenue. *Held*, not allowable.

3. Interest upon outlay in forming the company, obtaining their act of incorporation, (5 & 6 W. 4, c. cvii.) raising the capital, and other original expenses. *Held*, not allowable.

4. "Income tax paid by the company in pursuance of stat. 5 & 6 Vict. c. 35, amounting in the whole to 10,000*l*." *Held*, allowable so far as regards the tax imposed in respect of mere occupation.

5. "Additional parochial assessments not actually paid, but which will be payable in consequence of the recent decisions of this court on the rating of railways." *Held*, not allowable.

6. The branch lines were worked at a loss, which the company incurred solely on account of the increased traffic occasioned by those lines on the principal railway, and a deduction was claimed for this loss. *Held*, not allowable.

7. In estimating the tenants' profits, a per centage was taken on the original value of the moveable stock, at such a rate as might reasonably induce a lessee, obtaining that amount of profit, to pay the residue of profits as rent. The appellants contended that the per centage should have been taken on the gross receipts. *Held*, that this was a question for the sessions, not for the Queen's Bench.

8th question immaterial.

9. (a) The following increase of assessment was claimed by the respondents. The moveable stock had, in making the rate, been estimated at its original value, which exceeded the actual value at the time of assessment. The respondents insisted that any calculation of the value for the purpose of reducing the rate, should be taken according to the latter state of the property. *Held*, that the estimate ought to be so taken. *Queen v. Great Western Railway Company*, 6 Q. B. 179.

Cases cited in the judgment: *Regina v. London and South Western Railway Company*, 1 Q. B. 558, 585; *Regina v. Grand Junction Railway Company*, 4 Q. B. 18, 41.

10. *Sale of shares.*—*Registration of company.*—The 26th section of the 7 & 8 Vict., c. 110, which prohibits the sale of shares in a joint-stock company, until such company shall have obtained a certificate of complete registration, does not apply to railway companies which cannot be carried into effect without an act of parliament; such railway companies require provisional registration only. *Young v. Smith*, 31 L. O., 295.

RATEABILITY.

*Theatre.*—*Local Act.*—By a local act, 51 G.

3, c. cl., after reciting a former act of 12 Car. 2, whereby a yearly sum of 250*l.* was charged upon the houses of the inhabitants of St. Paul's, Covent Garden, except Bedford House, for the support and benefit of the rector, curate, clerk, and sextons for the time being of the parish, that charge of 250*l.* was repealed, and in lieu thereof a yearly sum of 520*l.* was charged upon all houses within the said parish, to be assessed by the churchwardens, and paid by the occupiers of such houses respectively, and recoverable, in case of refusal to pay the sums assessed on the house or houses in their occupation, by distress. *Held*, that the word "houses" in this act meant houses intended for human habitation, and that Covent Garden Theatre was not rateable under the act. *Sarman v. Darley*, 14 M. & W. 181.

And see *Railway*, 2.

#### RECEIPT.

See *Stamp*, 1.

#### REPUTED OWNERSHIP.

See *Bankrupt*, 2.

#### STAMP.

1. *Receipt in full of balance.*—The defendant having employed the plaintiff to do some plasterer's work for him, the latter required the former to pay him money on account for it weekly, as the work was done, which the defendant accordingly did, and receipts were given for the amount so paid. And the following receipt was given by the plaintiff to the defendant when the work was completed:—"1843, July 8. Received of Mr. G. L., the sum of 2*l.* 2*s.*, being the balance of account up to this day, for houses in Wellington Road." *Held*, that this was an acknowledgment of a sum therein mentioned, being received in satisfaction of a debt, whereof the amount is not specified, within the meaning of the clause in the schedule as to receipts in the Stamp Act, 55 G. 3, c. 184, which requires a 10*s.* stamp. *Birt v. Leigh*, 14 M. & W. 177. See *Cooper v. Wakley*, 3 C. & P. 474; *Moo. & M.* 248; *Diddin v. Morris*, 2 C. & P. 44.

See notes on this case, 31 L. O. 398.

2. *Receipt.—Evidence.*—Defendant, in support of a plea that he has paid five quarters' rent to M., tendered in evidence the following paper signed by M.:—"Mr. Jones" (defendant) "having written off the sum of 72*l.* from his mortgage debt, being five quarters' rent of his house, I hereby discharge the same rent till the 24th day of July, 1841." M. had delivered the paper to the defendant, being then indebted to him on a mortgage debt exceeding 72*l.* The only stamp on the paper was a 1*l.* stamp, with no denomination on its face, and had been affixed more than one month after the signing and delivery of the paper.

*Held*, 1st. That the instrument was a receipt under stat. 55 G. 3, c. 184, sched. part 1, receipt.

2nd. That it was inadmissible, for want of a proper stamp, though a receipt stamp would have cost less than 1*l.*, sect. 10 of stat. 55 G. 3,

c. 184, not protecting receipts which have not been stamped within a month after execution, under stat. 35 G. 3, c. 56, ss. 8, 10, 11. *Lucas v. Jones*, 5 B. B. 949. See *Hart v. Nash*, 2 C. M. & R. 337, S. C. 5 Tyrwh. 956; *Hooper v. Stephens*, 4 A. & E. 71.

See notes on this case, 31 L. O. 387.

3. *Agreement indorsed on promissory note.*—A., B., & C. made a joint and several promissory note for 100*l.*, payable to the plaintiffs, trustees of a banking company, or their order, on demand. A memorandum indorsed on the notes at the same time, signed by A., B., & C., stated that the note was given to secure floating advances made by the company to A., from the respective times when such advances had been or might be made, together with commission, &c., not exceeding in the whole, at any one time, the sum of 100*l.* In an action by the payees of the note against C., to which he pleaded the Statute of Limitations, the plaintiffs proved payments by A., in reduction of the floating balance, within six years, and sought to use the memorandum indorsed on the note to show that such payments had reference to the note. *Held*, that it could not be read in evidence without an agreement stamp. *Cholmeley v. Darley*, 14 M. & W. 344.

See notes on this case, 31 L. O. 399.

4. *Transfer of mortgage.*—P. demised land to V. for 1,000 years, to secure a loan. By a subsequent deed he charged the premises with payment to V. of a further loan, making the whole 150*l.* V. called in the money, and B. and C. having agreed to advance it, an indenture was executed, whereby, in consideration of payment of the 150*l.* to V. by B. and C., and of 15*l.* advanced by them to P., the mortgagor, P. appointed that the land should remain, &c., to the use of B. and C., their heirs, &c., with proviso for reconveyance on payment by P. of the 165*l.* and interest, and with a covenant by P. to pay the same; and V., the prior mortgagee, assigned the term of 1,000 years to B. and C.

*Held*, (under stats. 55 G. 3, c. 184, sched. tit. *Mortgage*, and 3 G. 4, c. 117, s. 2,) that on this last deed an *ad valorem* stamp of 1*l.*, (in respect of the additional 15*l.*), with stamps for progressive duty, was not sufficient, the conveyance of the fee creating new security, in respect of which a deed stamp was necessary. *Brown v. Pegg*, 6 Q. B. 1.

Cases cited in the judgment: *Lant v. Peace*, 8 A. & E. 248; *Doe d. Bartley v. Gray*, 3 A. & E. 89. And see *Doe d. Snell v. Tom*, Q. B. 615; *Doe d. Barnes v. Rowe*, 4 New Ca. 737; *Doe d. Barnes v. Roe*, 325, 538; 6 Scott, O. S. n. 30.

5. *Agent.—Contract.*—The proviso in the Stamp Act, 55 Geo. 3, c. 184, Schedule part 1, "Agreement," which renders one stamp of 1*l.* 15*s.* sufficient where a contract is contained in several letters, applies equally to letters written by an agent of the parties, as to those written by the parties themselves. *Grant v. Maddox*, 31 L. O. 560.

## STOPPAGE IN TRANSITU.

See *Bill of Lading*.

## THEATRE.

See *Rateability*.

## USES, STATUTE OF.

*When executed in married woman.*—By lease and release, by way of marriage settlement, lands, the inheritance of the wife, were conveyed by her to trustees and their heirs, to the use of the wife and her assigns, until the marriage; and from the solemnization of the marriage, in trust for the wife and her assigns, during her life, for her own sole and separate use, independent of the debts, control, or engagements of the husband, his heirs and assigns. *Held*, that the trustees did not take the legal estate during the life of the wife, but that the use was executed in her, notwithstanding the words "to her own sole and separate use," &c. *Williams v. Walters*, 14 M. & W. 166.

Cases cited by the court: *Horton v. Horton*, 7 T. R. 632; *Doe v. Barthrop*, 5 Taunt. 382.

## WITNESS.

See *Bankrupt*, 4.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Lord Chancellor.

## DUTIES OF THE CHIEF AND JUNIOR CLERKS IN THE MASTER'S OFFICE.

*Under the Chancery Regulation Act, (3 & 4 W. 4, c. 94.) the Master has no authority to transpose the duties of his clerks, and to depute the business of the chief clerk to be habitually performed by the junior or copying clerk.*

THE petition in this case is fully stated in vol. 29, page 217, and the partial hearing of the argument on the 30th of July, 1845, was reported at length at page 277 of the same volume. The hearing was resumed on the 13th and 19th of February last, Mr. Romilly and Mr. Roundell Palmer appearing for the petitioners; Mr. Stuart and Mr. Campbell for Mr. Whiting, the chief clerk; Mr. James Parker and Mr. Stonor for Master Lynch. The Lord Chancellor was assisted by the Master of the Rolls.

Mr. Campbell objected to the petitioners being heard, as they did not allege that there was any cause of complaint, it being admitted that the business was well and effectually done in the office of Master Lynch. He admitted that the principal business was transacted by Mr. Wright, the junior clerk, but he contended that from the year 1816, when the report of the commissioners was made, great alteration had taken place in the practice in the offices of many of the Masters who had from time to time distributed at their discretion the business to their clerks; and he cited the practice of Mas-

ter Stephen in 1820. In the present case it appeared, from the affidavits of Mr. Whiting, that he performed such business as was directed by the Master. That his income was 1000*l.* a year, and that the income of the junior clerk, including a salary of 150*l.* a year, amounted from the fees to which he was entitled for copying, to 700*l.* or 800*l.* a year. Mr. Campbell then referred to the affidavit of the petitioners in respect of what they then believed to be the practice, and sworn on the 23rd of December, 1843, and on the 8th of January, 1846. It stated the following to be personally performed by the Masters. Appointing guardians for infants; settling allowances and schemes for maintaining and educating infants; proposals for the marriage of wards and their settlements; appointing trustees and receivers and approving sureties; schemes for managing and applying funds of charities; proposals for letting, selling, and managing estates; investigating titles; proposals for sale or purchase; settling issues and special cases; compromising and settling suits; exceptions for scandal and impertinence, and objections to reports; hearing counsel; administering oaths; taking acknowledgments; examining cases of persons on contempt, and all matters requiring personal discretion. The duties of the chief clerk were drawing and settling recognizances; taking accounts of receivers, assignees, executors, trustees, and partners; ascertaining amounts due to mortgagees, annuitants, legatees, and creditors; apportioning funds and costs, and making all calculations and computations; comparing abstracts; settling conditions of and conducting sales; drawing and settling reports, certificates, orders on special applications, and previous to the duty being transferred expunging scandal and impertinence. The duties of the junior clerk were to examine copies of decrees and orders of reference with the originals; to receive and enter minutes of all states of facts, charges, claims, and other proceedings left in the office; to issue and keep a register of all warrants; to enter warrants; to select and arrange papers for the use of the Master and chief clerk; to enter orders on special applications; to make office copies of documents; transcribe reports and certificates; receive and keep an account of fees to the fee fund; to enter in the cause books the minutes of proceedings of warrants; arrange and keep an index of the office papers and attend court with documents when required. That the other business had been either done by the Masters or the chief clerks, at the option of the solicitors, but the deponents aver that until December, 1843, these duties had never been otherwise performed except in cases of illness or temporary inability. That to a copying clerk might safely be delegated the mechanical duties of keeping of a register of the warrants and names of solicitors; arranging records, books and papers; attending court and keeping the fee account. That applications for time to answer, enlarge publication and amend bills, if not by consent, are always heard by the



Master or chief clerk, and the orders drawn up according to form, except when varied by memorandum endorsed by the Master or chief clerk on the warrant.

Mr. *Campbell* stated that he had referred at length to this important affidavit, to prove that it was in the discretion of the Master to apportion the business of his office, as many of the duties therein stated to be those of the chief clerk were, in 1819, performed by the Master. Mr. *Campbell* then contended, the Master had a power to regulate his business, and in the present instance it had been usefully and beneficially exercised; that he could dismiss his clerks, and that the court would not interfere with the arrangements of the Master, unless there was a complaint of a defective working.

Mr. *James Parker*, with whom was Mr. *Stonor*, urged that no complaint had been made of the way in which the business was transacted, and no evidence that Mr. *Whiting* was incompetent. That if, as the petitioners stated, the functions of the chief clerk were judicial, the Master might not be able to delegate such duties, and would consequently be obliged to perform them hereafter. Such would be the strict law, although custom had sanctioned some departure from it: but the consequences of this inquiry might be a return to it, whereby the Master would be overwhelmed with business, and his clerks, with 1000*l.* and 700*l.* or 800*l.* a year respectively, would be either idle, or mechanically employed in the drudgery of the office. Ever since 1816, such allotments of the duties had been made. The committee, in their report of that year, did not recommend the performance of particular duties, and were doubtless aware of the distribution of the duties. In *Com. Digest*, title "Officer," D. 1, 2, a Master in Chancery was not mentioned as an officer who could depute his work. Mr. *Parker* then submitted, that suitors were not entitled to contend that only the chief clerk could perform certain duties, but the Master had discretion to depute; that the court would not look beyond the master, who might derive assistance from either of the clerks, according as each appeared best qualified.

Mr. *Romilly* replied at great length, repeating much that was contained in his opening speech, and going into the history of the Masters' offices. He distinguished between the right of delegating and obtaining assistance for duties. Many of the Masters' duties were judicial, others ministerial; but in course of time, in consequence of the greatly increased amount of business, the Master had been permitted to depute certain duties to a chief clerk, who was recognised by the court and the legislature. Many evils might arise if the Master was allowed to evade the statute, by deputing duties to an unqualified person. A child, or relation of the Master, might receive the salary if the work could be delegated to another clerk. If the court allowed this, the act of parliament would be a nullity. That act stated

what qualifications the Master's chief clerk was to possess, and the salary he was to receive. It was, therefore, clear that the legislature did not intend a non-qualified person to perform the duties or receive the salary.

The *Master of the Rolls*, in delivering judgment, stated the nature of the petition and the circumstances of the case respecting Mr. *Whiting* and Mr. *Wright*. The petition complained that, notwithstanding the appointment of Mr. *Whiting* as chief clerk, he did not perform the duties of that office, but that they were performed by *Wright*, the junior or copying clerk, who was not qualified by law to perform them; and it prayed such order as the court should think fit to make. The defence was, that the Master had an absolute right to apportion the business as he might choose between the two clerks. The qualification of the chief clerk was defined in the 3 & 4 W. 4, c. 94, s. 18. It was reasonable to admit a certain degree of discretion in the Master, under due vigilance on his part, in apportioning such duties; as in certain cases it might be inconvenient to prevent one clerk, if competent, from transacting the business of the other; but it could not be inferred that one was to be habitually employed on the duties of the other, or that neither clerk had any peculiar duties. No such inference could be drawn from the act; or that the Master had the authority claimed by his counsel. That act recognised two clerks, to the chief of whom was assigned a salary of 1,000*l.* per annum, and who was prohibited from taking any fees: to the junior 150*l.* a-year, with permission to receive 1*l.* per folio for copying certain documents; this depending, of course, upon their length. As no reason was stated for this discrepancy in the mode and amount of remunerating these clerks, it must be presumed to have been founded on the difference in their duties, and not that the master was to be fettered in his choice of a person with the requisite qualification, without regard to his abilities. Nor could it have been intended that the junior, having an interest in the copying, should have delegated to him the duties of the chief clerk, who was debarred expressly from all such interest. No definition of their duties had been given, or even mentioned, by the legislature, and hence it was affirmed that the Master had the unlimited power of allotting the duties of the one to the other; but the allegation of this power seemed to be unfounded. Every practical man of learning and experience well knew the difference between the duties of the two clerks, and the business of the office would be embarrassed rather than expedited by defining them too nicely. The Master of the *Rolls* then touched upon the evidence of various commissions and orders relating to the Masters' offices from 1625 down to 1826, and pointed out several of the principal duties of the Masters and their clerks, from which it appeared that many of those of the chief clerk were judicial, and that all those of the junior were ministerial and mechanical, but that each was under the control of the Chancellor.

His lordship then spoke in terms of high ecomium of the manner in which the business was transacted in Master Lynch's office, and stated, that no allegation to the contrary was hinted at in the petition; but granting that Mr. Wright had preserved himself from temptation, still it was clear that the legislature intended to prevent as much as it could the possibility of deviating from the strict path of duty. The absence of any complaint did not prove the absence of any cause of complaint. The copying clerk received a benefit from long documents, and all persons connected with the business of the stationer upwards, were interested in the concealment of such abuses. It was therefore necessary to guard against the recurrence of the mischief as the legislature had intended. It could not be said, that those intentions were fulfilled by the manner in which Master Lynch at present allotted and distributed the business of his office. If the Lord Chancellor should be of this opinion, there could be no doubt that an intimation to that effect would immediately induce a change in the practice, and prevent the necessity of making any order for the purpose.

The Lord Chancellor expressed his concurrence in the judgment of the Master of the Rolls, and referred briefly to the commissions in 1740 and 1816. A certain qualification in the chief clerk was required by legislative enactment; but his duties could not be defined strictly, but in substance the act must not be evaded. In the present case, its spirit and principle appeared to have been departed from; and therefore his lordship agreed with the Master of the Rolls in thinking, that an irregularity had been committed. No order would be made at present. The construction of the act was so obvious, that its operation could not be evaded. His lordship testified to the efficiency of Master Lynch in conducting business, and stated, that he would intimate, as he had several months ago, his decision on the present irregularity, and was perfectly convinced that such intimation would be sufficient to induce Master Lynch, and every other Master to perform his duty. His lordship's own opinion had been always perfectly clear on this subject.

*In the matter of the suitors of the Court. In re Whiting.* Feb. 13 and 19; and May 28, 1846.

#### Vice-Chancellor of England.

##### SEQUESTRATION.—CONTEMPT.

*An order cannot be obtained as a matter of course against a peer for nonpayment of money ordered to be paid by him, if any calculation is required to be made of subsequent interest.*

THIS was a motion that the defendant might be ordered within ten days to pay to the plaintiff the sum of 5041l. 8s. 7d., being the balance of principal, interest, and costs, mentioned in an order dated the 25th of February, 1835; and also the sum of 2958l. 7s. 8d., and the fur-

ther interest from the date of the notice to the time of payment on those respective sums.

Mr. *Whitmarsh* for the plaintiff.

Mr. *Glasse*, in opposition to the motion, said, the application was founded in mistake, as the practice was, where a peer or person having privilege of parliament was guilty of contempt in refusing or neglecting obedience to an order of the court, instead of proceeding against him by attachment, to obtain an order *nisi* for a sequestration, which was granted as of course. A copy of that order was personally served on the person privileged, and if he did not show cause within the time fixed by such order, the same was made absolute upon a motion of course. *Crawley v. Clark, Smith's Practice, vol. 1, p. 440.*

Mr. *Whitmarsh* in reply said, that in this case it was necessary to obtain an order for subsequent interest, and without that, any application for a sequestration would be irregular.

The Vice Chancellor said, the order for a sequestration must express the sum which is to be levied, and therefore, so far as the point of practice went, the plaintiff was right in proceeding *de novo*, and obtaining an order for payment of the money.

*Wright, v. Earl of Mornington.* May 22, 1846.

#### Vice-Chancellor Knight Bruce.

##### PRACTICE.—JURISDICTION.—ORDERS OF 5TH MAY, 1837.—VACATION.

*Semble, that the 15th Order of May, 1837, empowering any judge of the court to hear special applications in vacation, where the proceedings have been originally instituted before another equity judge, does not apply to any other than the long vacation.*

Mr. *Welch* moved, upon the day after Easter Term, for an injunction to stay trial, but mentioned that the bill was filed, and the cause set down in the court of another Vice-Chancellor, who had adjourned until Trinity Term. The question was, whether the order of May 1837, did or not empower this branch of the court to interfere.

His Honour said, his impression was, that the order in question applied only to the long vacation, although he saw no reason why it should not be extended to all vacations: if so, to grant the injunction would be useless. He was quite willing to grant it; if it were thought desirable to take it, subject to the risk of having it discharged, upon the ground of want of jurisdiction under the order in question, during the present vacation.

Mr. *Welch* declined taking the order.

*Lawton, v. Ridsdale.* Lincoln's Inn, May 9th, 1846.

#### Queen's Bench.

(Before the Four Judges.)

##### PRACTICE.—SPEEDY EXECUTION UNDER 1 W. 4, c. 7.

*A cause was tried in vacation, and the judge*

*granted a certificate for speedy execution pursuant to the 1 W. 4, c. 7, s. 2, judgment was signed and execution issued the following day.*

*Held, that the proceedings were regular, and that the effect of the statute is, that execution may issue immediately, and that it is not necessary that four days should elapse before judgment is signed.*

A certificate for speedy execution was given by the judge who tried the cause, pursuant to the statute 1 W. 4, c. 7, s. 2, and execution issued the next day. A rule nisi had been obtained to set aside the proceedings for irregularity on the ground, that according to the practice of the court four days ought to have been allowed to elapse before judgment was signed and execution issued.

Mr. Watson showed cause.

The statute 1 W. 4, c. 7, s. 2, enacts, that "a rule for judgment may be given, costs taxed, and judgment signed forthwith, and execution may be issued forthwith." By a rule of this court, Trinity Term, 4 Vict.,<sup>a</sup> it is ordered, that where judgment is signed by virtue of a judge's certificate given in pursuance of this act, such judgment may be signed without any rule for judgment. The necessity of a rule for judgment being therefore abolished, the fair and reasonable construction of the statute must be, that the effect of the judge's certificate is to give a party the means of obtaining immediate execution without waiting for the lapse of four days, which was formerly required to be done by the practice of the court. In the 3 & 4 W. 4, c. 42, where a judge has power to direct a cause in which the demand does not exceed 20*l.*, to be tried before the sheriff of the county, there is a similar provision, that costs shall be taxed, judgment signed, and execution issue forthwith; and it was held in *Nicholls v. Chambers*,<sup>b</sup> that where costs were taxed, and judgment signed the same day, that the proceedings were perfectly regular.

Mr. Lush contra.

In *The Governors of the Poor of Exeter v. Sivell*,<sup>c</sup> the court held, that where judgment was signed in vacation under similar circumstances, pursuant to the statute 1 W. 4, c. 7, s. 2, a rule for judgment must be given, notwithstanding the provisions of the statute, and 1 Reg. Gen. H. T. 2 W. 4, s. 67. The necessity of a rule for judgment was abolished by the rule, Trinity Term, 4 Vict., and the question is, whether that rule has made any difference as to the time in which judgment may be signed. The rule of H. T. 2 W. 4, s. 67, was only passed to assimilate the practice in the Queen's Bench with that of the other courts, and it was not intended by the 1 W. 4, which gives a judge power to grant speedy execution, that the practice, as to time, should be altered, but that the plaintiff should still have to wait four days before he could sign judgment. The statute was only intended to put a plaintiff in

the same situation when his cause was tried in vacation as he would have been if it had been tried in term.

*Cur. adv. vult.*

Lord Denman, C. J., on a subsequent day said the court was of opinion that the rule ought to be discharged.

Rule discharged.

*Alexander v. Williams.* Easter Term, 1846.

### Queen's Bench Practice Court.

#### OUTLAWRY. — DISABILITIES CONSEQUENT UPON.

*An outlaw cannot maintain an application to compel the delivery of an attorney's bill, or to refer it to taxation.*

A RULE having been obtained calling upon Mr. G. S. Ford, an attorney of this court, to show cause why he should not deliver to one Hunter, or to his attorney, a signed bill of his fees, &c., included in a warrant of attorney of the 20th of October, 1840; or, why the bill already delivered should not be signed and referred to taxation,—

The *Attorney-General*, (with whom was *Petersdorff*;) now appeared to show cause upon an affidavit stating that default having been made in payment of the sum for which the warrant of attorney was given, judgment had been entered up, execution issued, and proceedings to outlawry taken thereon, and that Hunter was duly outlawed on the 13th of November last. The learned counsel submitted that as Hunter was an outlaw, he was not in a condition to make this application, inasmuch as it was for his benefit, and not merely to set aside irregular proceedings. *Walker v. Thelluson*, 1 Dowl. N. S. 277; *Davis v. Trevanion*, 2 Dowl. & L. 743.

*Watson*, contra, submitted that this was one of the cases in which an outlaw should be allowed to appear. *Davis v. Trevanion* is rather favourable than otherwise to the present application, for there the court entertained the prayer of an outlaw to set aside a warrant of attorney.

*Wightman, J.* There the warrant of attorney was set aside for an irregularity in the attestation. It seems to me that the present case is precisely within the principle of that case, and of *Walker v. Thelluson*. The outlaw is here seeking for a benefit, and not merely to set aside irregular proceedings. The rule, therefore, must be discharged, but as the objection is a preliminary one, without costs.

Rule discharged without costs.

*In re Ford*, Gent., one, &c. Easter Term, 1846.

### Common Pleas.

#### SPECIAL CASE.—DELIVERY UP OF POSTEA FOR WANT OF SERJEANT'S SIGNATURE.

*Where by consent a verdict is found for the plaintiff, and a special cause drawn up for the opinion of the court, and the defendant*

<sup>a</sup> 1 Q. B. R. 699. <sup>b</sup> 2 Dowl. 693.

<sup>c</sup> 7 Dowl. 624.

*afterwards refuses to procure a serjeant's signature thereto on his behalf, the court will order the postea to be delivered up to the plaintiff, unless within a certain time such signature be obtained.*

Channell, Serjeant, applied for leave to set down the special case herein for argument without the signature of a serjeant on behalf of the defendant. It was an action of ejectment tried on the 2nd of August last, before Tindal, C. J., when, by consent, a verdict was entered for the plaintiff, subject to the opinion of the court on a special case to be settled by a barrister. On the 9th of December the case was finished and notice thereof given to the plaintiff, who having paid all the fees due, and obtained the special case, applied repeatedly to the opposite party to instruct a serjeant to sign it, but without success.

Tindal, C. J. Why not move for the judgment of the court on the verdict, unless the defendant will consent to have the special case signed?

Channell, Serjeant. In that way it was doubted whether the costs incurred by the plaintiff could be recovered; for the order at *nisi prius* provided that "the costs of the cause and of the reference should abide the event of the said award." No power, however, was given to the barrister to determine the matter. The cases of *Mostyn v. Champneys*, 1 Scott, 57, and *Jackson v. Hall*, 8 Taunt. 421, were then referred to.

By the Court. The case, call it what you may, either a special case or an award, is for the opinion of the court, and the costs are to abide the event of that case. The rule ought to be, that unless the defendant within one week, get the case signed on his behalf, the postea should be delivered to the plaintiff.

Rule granted accordingly.

*Doe dem Phillips v. Rollins.* Easter Term, 1846.

**PLEA OF MUL TIEL RECORD.—VARIANCE IN DATE OF RECORD NOT MATERIAL.**

*Where a variance appears between the date of a judgment and that alleged under a videlicet, in a plea of mul tiel record, the court will, notwithstanding, give judgment for the plaintiff, the record agreeing in other respects.*

Dowling, Sergeant, moved the court for judgment in this case on an issue joined on the plea of mul tiel record, the record being produced. The action was in debt on a judgment, and the declaration in the usual form alleged the judgment to have been theretofore, "to wit, on the 6th day of May, in the year of our Lord 1844." To this the defendant had pleaded mul tiel record, and thereupon the plaintiff by his replication took issue. The date of the judgment, as stated in the record, was different from that alleged in the declaration. It was contended, however, that as in the declaration the date had

been properly laid under a videlicet, it was immaterial and did not require strict proof.

By the Court. The amount recovered and appearing by the judgment now produced, being precisely the same as in that declared upon, and as the descriptions of the plaintiff and defendant, as well as the name of the court, appear to be exactly similar, the issue is, we think, sufficiently supported.

Judgment for the plaintiff.

*Wright and others v. Egan.* Easter Term, 1846.

**Exchequer.**

**LIBEL.—PLEADING UNDER THE 6 & 7 VICT., c. 96.**

*In an action against the proprietor of a newspaper for libel, the defendant cannot plead not guilty, together with a plea of apology and payment of money into court, under the 6 & 7 Vict., c. 96, s. 2.*

Lusk had obtained a rule nisi to rescind an order of Platt, B., allowing the defendant to plead several matters. The action was brought for a libel inserted in a newspaper, and the question was whether the defendant could plead not guilty, together with a plea of an apology, and payment of money into court.

Jervis and C. Clarke showed cause. The defendant is entitled to plead these pleas. The 6 & 7 Vict., c. 96, s. 2, enacts, "that in an action for a libel contained in any public newspaper, or other periodical publication, it shall be competent for the defendant to plead that such libel was inserted without actual malice, and without gross negligence, and that at the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or other periodical publication a full apology, and that every such defendant shall upon filing such plea be at liberty to pay into court a sum of money by way of amends for the injury sustained, and such payment into court shall be of the same effect, and be available in the same manner and to the same extent, and be subject to the same rules and regulations as to the payment of costs and the the form of pleading, except so far as regards the pleading of the additional facts hereinbefore required to be pleaded by such defendant, as if actions of libel had not been excepted from the 3 & 4 Will. 4, c. 42." That statute is cumulative, the object of the legislature being to enable the defendant to plead a new plea in addition to that which he might have pleaded at common law. [Parke, B. In an action of trespass the defendant could not plead not "guilty, and" also pay money into court in respect of the same trespass.] The form of pleading under the 3 & 4 Will. 4, c. 42, does not altogether control the 6 & 7 Vict., c. 96, s. 2, for the latter statute expressly excepts the "additional facts thereinbefore required to be pleaded." Before the statute it would have been no answer to say that the libel was inserted by negligence.

**Follock, C. B.** The defendant ought not to be allowed to plead not guilty, together with the plea given by the 6 & 7 Vict., c. 96, and the rule to plead several matters must be amended accordingly.

**Parke, B.** The statute extends the power of paying money into court to actions of libel, which were expressly excepted from the 3 & 4 Will. 4, c. 42. But then such payment into court is confined to certain special circumstances mentioned in the statute, and in order to make the plea good, it must show that those special circumstances exist. It is in truth a special payment of money into court. In other respects, it is similar to payment into court under the 3 & 4 Will. 4, c. 42, it admits that the defendant is wrong, but relies upon the payment as a satisfaction. It cannot, therefore, be pleaded together with the plea of not guilty. In the case of magistrates, they may plead not guilty together with a tender of amends; but if the plaintiff goes to trial and fails, he has no remedy for those amends. The order to plead several matters must be amended.

**O'Brien v. Clement.** Easter Term, May 8, 1846.

### Bankruptcy.

#### PETITION UNDER DEBTOR AND CREDITOR'S ARRANGEMENT ACT.

*Semble, That the neglect to serve a creditor with notice of the meetings held under the 7 & 8 Vict. c. 70, ss. 4 & 5, renders the proceedings taken at those meetings null and void.*

*When a debtor's petition under the 7 & 8 Vict. c. 70, is dismissed for irregularity, and he presents a second petition, the commissioner to whom the first petition was balloted, acts in the matter of the second petition without a fresh ballot.*

Mr. Lewis, an attorney, in applying to Mr. Commissioner *Fonblanque*, on behalf of John Thomas Angell, who had petitioned the court, under the 7 & 8 Vict. c. 70, stated that a difficulty having arisen in the service of the notice of meeting on one of the petitioner's creditors, a special application under sect. 4, was made, to Mr. Commissioner *Fonblanque*, to whom the petition was balloted, to order that service of the notice at the last place of abode of the creditor should be deemed good service, and that the learned commissioner had ordered accordingly; but the messenger on whom the duty devolved of serving the notice, had neglected so to do. The consequence was, that two meetings were held under the act, and resolutions come to at those meetings, without any notice having been served on the particular creditor in question; and when the resolutions so made were submitted to the commissioner, the objection having been taken, that there had been no service of notice on such creditor, the learned commissioner was of opinion that this was a fatal objection to the proceedings, and that the petition must be dismissed. The debtor was now about to present a second pe-

tion, and the object of this application was to learn if, according to the practice of the court in proceedings taken under this act, the second petition was to be the subject of a ballot to determine which of the commissioners should act in the matter of the petition, or whether the second petition went in matter of course to the same commissioner to whom the first petition was submitted.

Mr. Commissioner *Fonblanque*. The second petition will come before the same commissioner, without any ballot.

*In re John Thomas Angell.* 4th May, 1846.

### LAW PROMOTIONS AND APPOINTMENTS.

WHITEHALL MAY 9, 1846.

THE Queen has been pleased to direct letters patent to be passed under the great seal, constituting and appointing Thomas Flower Ellis, Esq., Barrister-at-Law, and Thomas Bros, Esq., Barrister-at-Law, her Majesty's Commissioners for inquiring into the Criminal Laws now in force in the Channel Islands.

The Queen has also been pleased to appoint Charles Clark, Esq., Barrister-at-Law, to be Secretary to the said Commission. Gazetted, May 12.

### PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

#### House of Lords.

Lord Brougham's Real Property Conveyance Bill has passed through the committee, and now waits only for 3rd reading.

The Whitsuntide holidays have suspended the progress of other measures.

The house met again after the recess on Thursday the 4th June.

#### House of Commons.

The Salford Hundred Court and Birkenhead Small Debt Bills have passed this house. We know not how to reconcile these projects with the statement of the Home Secretary, on the 19th May, "that measures of this kind should be suspended until an opportunity was afforded to the government of introducing a general measure."

The second reading of the Somerset County Bill is fixed for the 26th inst.

The Bankruptcy and Insolvency Bill stands for second reading on the 10th.

The other law bills remain in the same state as last reported. This house resumed its sitting on the 5th inst.

### THE EDITOR'S LETTER BOX.

WE are not able at present to say when the new edition mentioned by "A. Z." will be published. If not soon, he need not expect it till November.

The letter of our respected correspondent "M. W.," of Bath, is in the printer's hands. It is no province of ours to encourage plans for dispensing with the services of professional men, and we believe that no such plans will, on the whole, be really beneficial to the public.

# The Legal Observer.

SATURDAY, JUNE 13, 1846.

—“Quod magis ad nos  
Pertinet, et nosse malum est, agitamus.”

HORAT.

## BURDENS AFFECTING REAL PROPERTY.

THE Select Committee of the House of Lords appointed to inquire into the burdens on real property, have made their report, and the remedies or alterations they recommend may be divided into two classes. 1st, Those which depend on the present state of the law, in regard to the dealings with real property, and the administration of justice in criminal cases; and 2ndly, The imposition of rates and taxes for the poor, for lunatics, the militia, &c.

1st, The commissioners recommend an improvement of the Law of Real Property,—the Simplification of Titles and of the Forms of Conveyance,—and the establishment of some effective system for the Registration of Deeds. Amongst the passages in the report which bear on this branch of the subject, we select the following, which show the great grievance of the *Stamp Duties* :—

“The stamp duties levied under the head of deeds and instruments in 1844, amounted to 1,646,366*l.*, but a portion of this sum being derived from other sources, ought to be deducted before the burden affecting real property in that respect can be correctly estimated.

“The committee, moreover, wish to direct particular attention to the important evidence given by Messrs. Senior, Stewart, and Baxter, on the unequal pressure imposed by the various Stamp Acts on dealings with real property. The last-named witness, Mr. Baxter, says, the stamp upon a 50*l.* sale (calculating a certain length of conveyance) would amount to 12½ per cent., on a 100*l.* sale to 5 per cent., on a 300*l.* sale to 2½ per cent., on a 500*l.* sale to 1*l.* 14*s.* 3*d.* per 100*l.*, and above that sum to 1 per cent.

“The transfer, moreover, of real property is  
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subjected by law to other difficulties, expenses, and inequalities of a similar character. According to the evidence of the same witness, the expenses, including stamps, upon a sale of 50*l.* value, amount to no less than 30 per cent.; upon a sale of 100*l.* value, to 15 per cent.; upon a sale of 600*l.* value, to 7½ per cent.; upon 1,500*l.*, 5 per cent. The committee are convinced that the marketable value of real property is seriously diminished by the tedious and expensive process attending its transfer. Nor is it only in the transfer of real property that the pressure of this burden is felt. It is a work of time to raise money on landed security, and the law expenses incident to the transaction are a considerable addition to the interest on the sum borrowed. The transfer of the debt or mortgage is also attended with serious expenses to the mortgagor; the process of discharging the land from one loan, and subjecting it to another, being both heavy burdens upon the proprietor. Mr. Baxter gives the following evidence on the expenses attending mortgages :—‘A mortgage for 50*l.* would cost, in stamps and law expenses, 30 per cent., a mortgage for 100*l.* would cost 20 per cent., a mortgage for 450*l.* would cost 7 per cent., a mortgage for 1,500*l.* would cost 3 per cent., a mortgage for 12,500*l.* would cost 1 per cent.; for 25,000*l.* it would cost 15*s.* per 100*l.*, and for 100,000*l.* it would cost 12*s.* per 100*l.*’

“The objects for which the above restrictions and taxes are imposed are all of a public nature, and interest alike the possessor of personal property, and the landowner who derives his whole income from realty. The prohibition to grow tobacco, and the restriction on the use of malt for agricultural purposes, are imposed for the protection of the revenue raised for the general purposes of the state. The stamp duties levied in connexion with real property are applied to the same objects; and the direct charges which constitute the heaviest burdens on real property supply the funds applicable to the internal services of the state.”

On the simplification of the *Forms of Conveyance*, the report contains only the following remarks :—

"The committee earnestly request the attention of the house to the important evidence of Mr. Stewart, on the evils proceeding from the length of deeds connected with real property; and while the committee acknowledge the benefit of the act passed last session respecting satisfied Outstanding Terms, and Short Deeds, they are at the same time anxious to impress on the house the necessity of a thorough revision of the whole subject of conveyancing, and the disuse of the present prolix, expensive, and vexatious system."

Then in regard to a *general registry of Deeds*, we find this passage, the latter part of which contains a very important admission:—

"The committee have received evidence on the advantages of a registration of deeds in Scotland and Ireland, and on the great facilities afforded by means of similar institutions to dealings with real property in foreign states. The committee, however, limit themselves to the expression of their opinion, that a registry of title to all real property is *essential to the success of any attempt to simplify the system of conveyancing.*"

In regard to the expenses of conducting *Criminal Pleadings*, the committee recommend an extension of the measure of 1835, by relieving counties and boroughs from the portion of expense to which they continue liable for criminal prosecutions, as well as the maintenance and conveyance of prisoners. This measure, however, they observe, should be accompanied by an adoption on the part of the state of an effective control.

It will be recollected that Sir Robert Peel, on opening his plan for the gradual repeal of the Corn Laws, stated, that amongst other measures for the relief of the landed interest, he proposed to alter the law of Settlement of the Poor, the Prosecution of Offenders, and the management of the Highways and Turnpike Trusts. In the present report the committee recommend, that

"Where establishments exist or may be required for the support of lunatics, and where there are obvious reasons, both of economy and of humanity, for centralising the administration, and where, above all, the resources of the state can be made available, without any risk of aggravating or increasing the evil proposed to be remedied, the committee are not prepared to justify the imposition of the whole cost upon one description of property. The committee therefore submit, that the charge for the maintenance of pauper lunatics throughout the empire ought to be undertaken by the public.

"To a certain extent the observations made on lunatic asylums may be applied to some branches of the expenditure for the maintenance and relief of the poor. Mr. Coode

shows from official documents, that the establishment charges, inclusive of salaries, amount to 17 per cent. on the total expenditure for the relief of the poor, and states, that these charges might be provided for by the government, without leading to any evil consequences in the administration of the poor law.

"A charge is periodically cast upon the land for the militia rate; this is not now levied, the militia being disembodied; but, considering the object of the militia to be general, and not confined to the interests of a particular class, the committee are of opinion that this charge should be provided for by parliament, care being, however, taken, that if the public assume the responsibility of the charge, the government should have authority to insure the efficiency of the force."

2ndly, The burdensome rates and taxes which press on real property are thus stated:—

1. *The Land Tax*:—This in the opinion of the committee is a burden upon land, inasmuch as it must be deducted from the gross proceeds of the land before its net product can become available as profits of capital.

"The temporary act of the fourth of William and Mary imposed a rate of 4s. in the pound on land, hereditaments, tenements, offices, and pensions, and 2s. per 100l. on personal estates; but in the subsequent annual acts the rate varies from 4s. to 1s. in the pound on lands, hereditaments, &c. The 38 Geo. 3 fixed the quotas payable by each county, city, and borough, and directed the commissioners under the act to charge the several divisions in proportion to the sums assessed thereon by the temporary act of William and Mary. Although the quotas are fixed in reference to each district by the act of Geo. 3, the law admits a variation in the allotment of the sum amongst the different owners of property within the district, and redemptions continue in consequence, although, except for the purpose of insurance against an increased rate on improved property, the privilege of redemption is at the present price of the funds nearly a dead letter. This tax is most unequal in its pressure; and from the statement put in by Mr. Wood it appears that the quotas are higher in proportion to the value of property in the purely agricultural counties than in the mining and manufacturing districts. According to the latest returns, the land tax unredeemed amounts to the sum of 1,164,042l. The amount of land tax which has been redeemed no longer appears as a burden upon land; but it must not be forgotten that the proprietors of land, in order to escape from the operation of the tax, have paid over to the state an amount of capital of which the sum redeemed represents the annual interest, and of which the state is still deriving the advantage."

2. *The Poor's Rate and County Rate.*—These amounted in 1844 to 6,847,205l.

"That amount is the return of actual pay-

ments; but the evidence accompanying this report is pregnant with proof, that the employment of unprofitable labour would constitute an important addition to such returns. In order to reduce the poor's rate the farmers in many parishes employ more hands than the economical working of the land requires. Mr. Robert Smith explains this system; and Mr. Baker estimates this additional outlay on his farm at 3*l.* per week on 500 acres. The actual sum levied in the name of the poor's rate does not therefore correctly represent the full amount of the charge imposed upon real property by the laws regarding the maintenance of the poor. It is true that, as far as he is a rate-payer, the manufacturer may be influenced by similar motives to keep in employment for a time unprofitable hands; but the extent to which these motives operate will of course depend upon the relative proportions of the charges to which the respective interests are subjected."

3. *The Highway Rates*, exclusive of those which are at present relieved by the aid of turnpike trusts, amounted in 1839 to 1,169,891*l.*

"The committee feel it their duty to observe that the rate-payers not only have not the exclusive use of the highways, but are not even allowed to limit their expense by the repairs necessary for the conveyance of agricultural produce, inasmuch as the roads, if not in a state of repair sufficient for purposes of general traffic, may be indicted by any party using them, although such party is not liable to highway rate.

"The committee feel it their duty to direct attention to the probability of the repairs of the turnpike roads falling eventually on the real property. Mr. Baxter states, that in the neighbourhood of Doncaster tolls are paid to the turnpike trusts, notwithstanding the entire maintenance of the roads has fallen on the rates. Mr. Bennet also bears testimony to a rate being raised in the last year for the repairs of the Holyhead turnpike road, in his parish, amounting to an expenditure of about 100*l.* per mile. However important may be the advantages which accrue to the landed interest from the improvement of the highways, their maintenance is not the less a positive charge or burden affecting the profits of the real property of the country."

4. *The Church Rates* constitute a small but still a positive charge upon real property: they amounted in 1839 to 506,812*l.* (this being the latest return.)

5. *The Tithe Commutation* :—

"The committee are of opinion that the tithe commutation rent-charge operates as a burden on the land which is subject to it, inasmuch as a certain amount measured in produce must be paid, whatever may be the nature of the cultivation or the return made by it. The value of the crops, without reference to the natural

qualities of the soil, being taken into consideration in fixing the basis on which the commutation rests, lands, which by artificial means were rendered highly productive during the seven years on which the communication is based, have become in consequence permanently liable to a heavy rent-charge. Mr. Weall, in his evidence, states, that the high farming introduced at a great expense into the parishes of Beddington and Wallington had raised the tithes during the years preceding the Commutation Act from 3*s.* 6*d.* per acre to 7*s.* and 8*s.* per acre. Mr. Bennet remarks, that the heaviest wheat lands have the heaviest tithes upon them, thus imposing the heaviest charge where cultivation is the most expensive. Mr. Cramp says, the tithe in the parish in which he resides amounts to 17*s.* 6*d.* per acre; and Mr. Blamire, in answers 2524 and 2525, confirms the evidence of preceding witnesses, that the rent-charge amounts in some cases to more than one half the rent, that one third is not an unusual proportion, and that there are some rare cases where the rent-charge is equal in amount to the whole rent. On the supposition of a continued reduction in the amount of proceeds derived from capital invested in the cultivation of the land, it is self-evident that titheable land would be abandoned sooner than land which is tithe-free, and though the landowner has no claim whatever to the property of the titheowner, the tithe itself would in that case have the effect of diverting capital from its cultivation. The committee therefore submit to the consideration of the house the fact that 4,500,000*l.*, levied under the Tithe Commutation Act, becomes payable out of the proceeds of the land before any portion of them is available or applicable to the profits of capital vested in its cultivation. It is further important to consider the effect of this charge on the land in the case of a serious fall in the price of agricultural produce. Under the old law the value of the tithe would correspond with that of the crop, but under the law of communication it would take several years before the land would be relieved in the amount of its tithe."

6. Then in some counties there are separate rates for bridges, lunatic asylums, and constable rates, and the land is still liable, in case of the militia being called out, to a heavy disbursement for the support of that national force.

7. The window duty also is a tax on real property only.

8. The committee also observe that the *Income Tax* presses more heavily on land than on personalty, in consequence of the mode in which the two descriptions of property are assessed.

"Neither the landlord nor the tenant have any escape from the strict provisions of the law. The owner is assessed upon the gross rental, or on what the surveyor would consider a fair rent. No allowance is made for repairs,



agency, or arrears; in consequence of which it results that a landlord invariably pays a percentage to the income tax on a larger sum than his net receipts. The incomes of trades and professions, on the contrary, are generally ascertained by the voluntary declarations of the parties."

It seems, however, to be forgotten that real property is worth 30 years' purchase, whilst the incomes of trades and professions may not be worth more than 2 or 3 years.

On the other hand, the committee have directed their attention to the charges of a public nature, from which real property has become *exempt*, whilst other property remains liable.

#### 1st, Legacy and Probate Duty.

"Freeholds are exempt from legacy and probate duty. The committee have not been able to ascertain the exact amount of legacy and probate duty paid by leasehold property; but they feel it their duty to draw attention to the fact, that leaseholds are not only liable to the stamp duties on dealings with the property *inter vivos*, but also to the probate and legacy duty. Nor can the committee avoid reminding the house, that legacy duty is paid in every case where the testator has devised his lands to be sold: and according to the evidence of Mr. Baxter, a solicitor of very great practice, nine wills out of ten in the middle ranks of life convert the whole land into personality for the purpose of division. The evidence of Mr. Pressly tends to confirm the previous evidence of Mr. Baxter, that a considerable portion of the legacy duty is raised on freeholds devised to be sold for the purpose of division. The witness states that Mr. Trevor, the Controller of the Legacy Duty, estimates it, (the portion raised on freeholds devised to be sold,) at five-twelfths of the amount. Assuming the legacy duty to be 1,200,000*l.*, he estimates the proportion of duty arising from real estate at 500,000*l.* 'I think,' the witness continues, 'he has put it too high. I do not think that more than a fourth, or scarcely a fourth, of the 1,200,000*l.* legacy duty arises from land.' The witness, however, does not include leasehold property in his calculation, which, being liable to both probate and legacy duty, must be added to the above-mentioned estimate, before we arrive at the full portion of the legacy duty arising out of the proceeds of land."

2ndly, Taxes on Horses, estimated by the Secretary to the Board of Taxes at 79,096*l.*

3rdly, Tax on Shepherd's Dogs equivalent to 9,876*l.*

4thly, Fire Insurance on Implements of Husbandry and Stock, estimated at 50,000*l.*

Such is the substance of a report which has attracted a large share of public attention, and which we have deemed it necessary thus to analyze and place before our readers.

## DELAYS IN THE TAXATION OF CHANCERY COSTS.

Many and numerous complaints are made regarding the delays in the taxation of costs in Chancery. No blame is attached to the Taxing Masters, who, it appears, are punctual in their attendance and lose no time in transacting the duties of their department; but the pressure of business at this season is so great, that every hour is engaged for several weeks to come. In many instances, where the costs are heavy and complicated, the warrants which were granted several weeks ago, do not enable parties to complete the taxation, and several weeks must again elapse before further warrants can be returnable, and if the time then allowed should be insufficient, another and perhaps a longer interval must again take place, and so on until the office of the Accountant-General may be closed, and then the fund must remain undistributed until after the long vacation:—the parties being in the mean time deprived of their rights, and the solicitors of their costs and advances.

Something, it is submitted, should be done to remedy this serious evil, which is likely to extend over a large portion of every year.

We cannot forget that desirable as (for many reasons) was the abolition of the Six Clerks' Office, there were some facilities in the dispatch of business, which the clerks in court were enabled to grant; for although the far larger part of the business fell into the hands of about half a dozen clerks in court; they not only worked early and late to accommodate the solicitors; (their clients;) but they were enabled to call in aid the services of other clerks in court, who were not so overwhelmed with business; and thus the Master's certificate was obtained in time for the Accountant-General.

What then, it is asked, is the practical remedy? Assuming, as we do, that the present Taxing Masters are as efficient and diligent as can be reasonably expected,—then the only course seems to be to appoint additional taxing masters. The experiment might be tried of keeping open the office of the Accountant-General until the parties have an opportunity of completing their taxations; but this would be a hardship on the Accountant-General and his clerks. In some way or other, however, justice should be done without any unrea-

sonable delay. Perhaps it might be expedient to appoint some assistant masters, (as used to be the practice in the Queen's Bench); or to appoint junior masters at a somewhat less salary than the present officers. Looking at the whole of the Chancery staff, some saving might hereafter be effected. However convenient the arrangement might have been for the sake of providing compensation, we think that four record clerks at 1,200*l.* a year is a disproportionate allowance, when compared with the extent and importance of the work at the taxing office.

On the subject of the salaries of the taxing masters, we may remind our readers that in the latter part of the last session of parliament, the Lord Chancellor, in reference to the duties of taxing masters in Ireland, observed, that any person of ordinary intelligence and industry might execute the office; and so, we presume, he might according to the course of proceedings by the late clerks in court. But if the taxing masters are to exercise their discretion according to the particular circumstances of each case, then we are of opinion that their duties will rank next in importance to those of the judges. In many cases the costs are of equal amount to the matter in dispute, and whilst frequently they come to several hundred pounds they are sometimes several thousands. But whatever may be the quantum, strict justice should be done to both parties, whether litigants, or client and solicitor, and therefore the Masters should be persons of great practical experience, considerable legal attainments, and high character. Looking at the vast labour which most of the judges undertake, the taxing officers may be expected to put their shoulders to the wheel with equal diligence in their several departments. If their duties were exercised on mere matters of routine, some of our economical law reformers would doubtless think that a salary of 800*l.* or 1,000*l.* a year would be sufficient; but if they are to possess a knowledge of law and practice, with the experience and judgment we have supposed, then in order so induce competent persons to accept the office, their emolument should be 1,500*l.* or 2,000*l.*; especially as they have now a large addition to their duties by the taxation of conveyancing bills, under the Attorneys' and Solicitors' Acts, and the recent statutes relating to Conveyances and Leases, in which the skill and responsibility of the solicitor are to be the basis of his remuneration.

The outcry against the compensations tendered by immediate change exceedingly difficult; but we have no doubt that the hints we have here ventured to offer, will be duly considered in the proper quarter.

## POINTS IN COMMON LAW.

### COMPROMISE OF INDICTMENT, WHEN LEGAL.

We could scarcely select any topic more frequently discussed; and upon which a more remarkable discrepancy of opinion exists amongst persons generally well informed on such matters, than as regards the question how far it is lawful to compromise offences of a criminal nature. On the one hand, we frequently find it publicly announced that the accused has been allowed to *speak to the prosecutor*, or, in other words, that the latter is permitted to receive pecuniary compensation from an offender, under the implied sanction of the court, which, in consideration that the private feelings of the prosecutor are satisfied, substitutes a nominal punishment for one, the severity of which would be proportioned to the gravity of the offence. Cases of aggravated assault are frequently the subject of a compromise of this nature, and in the case of *Elworthy v. Bird*,<sup>a</sup> where the court was pressed to enforce an agreement for a separation between man and wife, comprehending a compromise of an indictment for an assault, Sir John Leach, then vice-chancellor, is reported to have said, that "all the authorities concur that the policy of the law does permit the compromise of indictments for assault; and such compromises are frequently recommended and approved by the court." On the other hand, we find men of equal sagacity and honour rejecting offers, of which humanity and prudence might have dictated the acceptance, upon the ground that it would be illegal and improper to entertain a proposal for the compromise of an offence of a criminal nature. Nor is this view wanting in the support derived from authority. Thus, in *Collins v. Blanton*,<sup>b</sup> Lord Chief Justice Wilmut said there could be no doubt but that compounding a prosecution for perjury was a very great offence to the public; and in *Edgcombe v. Rodd*,<sup>c</sup> where the plaintiff

<sup>a</sup> 2 Sim. & Stu. 372.

<sup>b</sup> 2 Wils. 341; 1 Smith & C. 154.

<sup>c</sup> 5 East, 294.

had been charged with disturbing the religious worship of a dissenting congregation, and afterwards brought an action for false imprisonment, and the defendants set up as a defence in satisfaction of the imprisonment that the prosecutor had agreed to proceed no further with the charge, the judges of the Court of Queen's Bench were unanimously of opinion that the agreement to forego the prosecution was unlawful, as an obstruction to public justice.

In a matter not of uncommon recurrence, where notions so vague, and a practice apparently so contradictory prevails, it is a subject of congratulation when a principle is authoritatively laid down, by which individuals may safely test the accuracy of their own views, and apply them to particular circumstances as they arise. Of this nature is the principle involved in a decision reported in the last number of the Queen's Bench Reports,<sup>d</sup> where the general doctrine appears to have been fully discussed, and all the authorities referred to. The action was brought upon an agreement to pay the costs of an indictment, charging the parties indicted with riot and assault, with assaults upon a sheriff's officer in the execution of his duty, and with assaulting persons acting in aid of a peace officer in the execution of his duty, in consideration that the plaintiff would not proceed with the indictment, and would also withdraw an execution under a writ of *fi. fa.* levied on defendant's goods. The defendants by their pleas contended, that the consideration for the agreement was illegal and void; and the plaintiff demurred to the pleas, and upon this demurrer the question was argued.

The judgment of the court was delivered by *Denman*, C. J., after consideration and upon an elaborate examination and review of all the leading cases decided during the last century. "The result of these cases," said the Lord Chief Justice, "makes it clear that some indictments for misdemeanour may be compromised, and equally so that some cannot. We should probably be safe in laying it down, that the law will permit a compromise of all offences, though made the subject of a criminal prosecution, for which offences the injured party might sue and recover damages in an action. It is often the only manner in which he can obtain redress. But, if the offence is of a public nature, no agreement can be valid that is founded on the consideration

of stifling a prosecution for it. In the present instance the offence is not confined to personal injury, but is accompanied with riot and obstruction of a public officer in the execution of his duty. These are matters of public concern and not legally the subject of a compromise." As regards the expediency of obtaining the sanction of the court to compromises of this nature whenever it may be practicable, Lord *Denman* observed, that "the approbation of the judge (whether necessary or not) may properly be asked on all occasions, where an indictment is compromised on the trial; plainly it cannot make that legal which the law condemns." Upon the grounds stated, the court held the agreement on which the action proceeded to be invalid, as founded on an illegal consideration, and that the defendants were entitled to judgment.

The principle of the decision in *Keir v. Leeman* was shortly after again brought incidentally under the consideration of the Court of Queen's Bench, upon a wholly different state of facts.\* The guardians of a poor law union had indicted the now plaintiff (*Goodall*) for disobeying an order of sessions for the maintenance of an illegitimate child, and before the trial he compromised the indictment with the defendant, who was clerk to the guardians, paying him 30*l.* 9*s.* 10*d.*, for maintenance and costs at the quarter sessions, and 50*l.* towards the costs of the indictment, which was not further proceeded with. Subsequently, the plaintiff discovered, that the order of sessions on which the indictment was founded was defective on the face of it, and therefore invalid, and the defendant, as the clerk of the guardians, was called upon to refund the money paid to him; in answer to which demand he stated, that "the board declined to entertain the question." An action of assumpsit for money had and received was then brought, but the plaintiff was nonsuited. *Tindal*, C. J. (who presided at the trial) observing, that the plaintiff had voluntarily made the compromise, and adding, that "he was not prepared to say that compounding a misdemeanour was in all cases an illegal act."

Upon application to the Court of Queen's Bench to set aside the nonsuit, and enter a verdict for the plaintiff for the amount claimed, it was pressed upon the court that the compromise in this case was unlawful, according to the rule laid down in

<sup>d</sup> *Keir v. Leeman and Pearson*, 6 Q. B. 308.

\* *Goodall v. Lowndes*, 6 Q. B. 464

*Keir v. Leeman*, the object being to stifle a prosecution for an offence of a public nature. But, although the court considered that the amount levied from the plaintiff was excessive, yet it held that he could not recover it back. There was no extortion by duress, and if the transaction were wrong, the parties were *in pari delicto*, and one of them could not, after voluntarily paying the money, repeat and sue the other. The rule therefore to set aside the *nonsuit* was refused.

In the case last cited, it will be observed, that the court determined that the compromise fell within the category of those which might be pronounced legal or otherwise, and in the course of the argument, *Dominan, J. C.*, remarked, that the case was different from *Keir v. Leeman*, because here the money was actually paid, whilst in *Keir v. Leeman*, it was only agreed to be paid.

The importance of these cases, however, depends not so much upon any subtle distinctions founded upon facts, as upon the broad principle already stated, that the law will allow the compromise of a criminal offence for which the injured party might recover damages in a civil action; but that stifling a prosecution when the offence is of a public nature, cannot be a legal consideration to support a contract.

surveyors, and nomination of trustees to receive compensation.

8. Arbitration.

9. Jury proceedings.

10. Miscellaneous instruments.

The introduction to the volume contains an able analysis of the three acts consolidating the clauses in regard to public companies, railways, and lands, and the observations which precede and accompany the precedents are very important. It is remarkable that the statutory forms of conveyance in the Lands Clauses Consolidation Act have not been adopted in practice, although it would seem that if in any case a short statutory form could be available, it would be so in railway and other joint stock companies. The 8 Vict. c. 18, s. 81, enables these companies to take their conveyances in the form given in the schedule, "or as near thereto as circumstances will admit, or in any other form which they may think fit." On the supposition, however, that railway companies, *properly advised*, do not, in the generality of cases, make use of the statutory form, the present authors have framed many of the precedents in this collection. They observe that for the following, among other reasons, it is conceived that the adoption of the statutory form for conveyance of freehold land is generally inexpedient:—

"1st. The form is unlike any instrument recognised by or known to the law as a means of transfer of real estate. It most nearly resembles a deed-poll of grant, and probably might be construed to be capable of operating, independently of the Lands Clauses Consolidation Act, as a grant, so as, under the act 8 & 9 Vict. c. 106, s. 2, to pass corporeal, as well as incorporeal hereditaments: (See *Prest. Shopp. Touche*, 232, and the cases there cited; 2 *Sanders on Uses and Trusts*, 5th edition, 48, n. 9; and *Stapilton v. Stapilton*, 1 Atk. 8;) but in the absence of a decided authority, it cannot be certainly said that such would be the construction.

"2ndly. If the statutory form is ineffectual as a deed of grant, its operation depends wholly upon its being a due execution of the common law power of conveyance conferred by the Lands Clauses Consolidation Act, so that should the provisions of that act, requisite to create the power or render it capable of execution, be not duly and completely complied with and observed, the instrument must, as a legal transfer of the land, entirely fail of effect.

"3rdly. It is submitted that every conveyance should, when it is practicable, be complete in itself, and have an intrinsic capacity to pass the estate expressed to be transferred independently, as far as may be, of other or collateral instruments. The practice of the pro-

## NOTICES OF NEW BOOKS.

*Precedents of Conveyances and other Instruments relating to the Transfer of Land to Railway Companies, with Introductory Matter and Explanatory Notes.* By HENRY TYRWHITT FRIEND, and T. HIBBERT WARE, Barristers at Law. London: Charles Reader. 1846. Pp. 452.

THE precedents in this collection are adaptations of drafts framed under Railway Acts before the Consolidation Acts came into operation. The object of the work is to afford assistance in the preparation of instruments of ordinary occurrence relating to lands for railway purposes.

The precedents are arranged under the following heads:—

1. Freeholds.
2. Copyholds.
3. Common or waste lands.
4. Lands in mortgage.
5. Rent charges.
6. Land in lease.
7. Nomination of surveyors, valuations by

fession, in requiring a vendor, who has a power of appointment over and also an estate in land, not only to exercise his power, but also to convey his estate in favour of a purchaser, is conceived to show this; but a railway conveyance in the statutory form has not such an intrinsic capacity, if it be merely a transfer in exercise of the power created by the Lands Clauses Consolidation Act, and not an independent operative deed of grant.

"4thly. The statutory form is wholly unsuited and unfitted for the insertion in it of recitals and covenants, or special agreements between the vendor and the company; and yet the insertion of some such recitals, covenants, or agreements is in most cases requisite.

"5thly. and lastly. No expense worth mention is saved by a strict adherence to the statutory form, while an attempt to adapt it to any but the simplest cases is a difficult and troublesome task."

The compilers therefore submit that it is but rarely that conveyances of freehold lands to railway companies should be prepared in the statutory form. They go over, and comment upon the contents of railway conveyances in freehold cases, and then come to the conveyance of copyholds. Here, they say, the form should be as nearly in the statutory form as practicable, because the power of conveying copyholds by deeds depends entirely on the enabling power of the act, and because such conveyances require enrolment on the rolls of the manor.

The editors observe that it is an error to suppose that greater laxity is admissible, and less care required in the preparation and perusal of *abstracts of title* to land purchased in a railway company than in the case of other purchasers.

"The acts by which such companies are regulated and empowered do not remedy defects in the title of persons from whom conveyances are taken, but merely in certain cases, where such persons have only limited or partial interests, or are under personal disabilities, give an operation or efficacy to their conveyances, which the latter would not, independently of the acts, possess; thus, although a tenant for life in possession is enabled to transfer the fee to a railway company, it must be clearly shown that he is such tenant, otherwise his conveyance will be inoperative, and to show this, the title to the land should be deduced for the usual period of 60 years, (*Cooper v. Emery*, 1 Phill. 388,) and the abstract examined as carefully as it would be, were the tenant for life about to sell or mortgage his life interest. The efficacy of every conveyance indeed to railway companies depends on the fact of the conveying parties having some estate in the land, and it is only where the owners' refuse to convey, or cannot be found, or no satisfactory title can

be deduced, and in one or two similar cases, that another, though much less desirable, mode than a conveyance, of obtaining the land required for the purposes of the railway is resorted to in the company."

The authors next discuss the important subject of the stamps to be used in these transactions, in regard to which many nice questions arise, particularly in reference to instruments requiring the common seal of the corporate body. The precedents are accompanied with valuable notes, and followed by a copious index.

## THE LAW STUDENT.

No. 2.

QUESTIONS AT THE EXAMINATION.

Trinity Term, 1846.

### COMMON AND STATUTE LAW AND PRACTICE OF THE COURTS.

WHAT do you understand by the words "common law?"

How long is the writ of summons available after it has been issued?

Will service of a copy of a writ of summons on one of several partners against whom the action is brought, be good service against the whole firm?

In a common action in assumpsit for goods sold and delivered, what is it necessary to prove before the sheriff on executing a writ of inquiry?

Is a verbal undertaking to pay the debt of another obligatory in law; and if not, why not?

After action brought, and declaration delivered in an action to which there is no defence on the merits, the defendant informs you, or you have good reason to believe, that he will go abroad to avoid payment, what steps would you then take on behalf of the plaintiff?

Is an issue in law tried by a jury at nisi prius; or where else?

Explain the difference between a verdict and a judgment.

Is the Statute of Limitations a good answer to an action in assumpsit on a bill of exchange more than six years old, on which bill the interest has been paid within six years?

What are the requisites to constitute a valid tender?

Is the general issue non assumpsit a good plea in an action in debt on bond?

What is meant by a plea in abatement, and within what time after declaration must it be pleaded?

In what respects do an interlocutory and a final judgment differ?

Within what time after verdict on nonsuit must application be made for a new trial?

Name the ordinary writs of execution, and state the operation of each.

### CONVEYANCING.

What estate must a person have to enable

him to make a lease, by which the lessee may derive a present tenancy and occupation?

If a remainder man, not in possession, make a lease, what estate or interest would the lessee derive under it?

Can a tenant for life in possession, make a lease, to continue beyond his life; and if so, under what circumstances so as to be good against those in remainder?

If joint tenants make a demise, what tenancy has the lessee?

If tenants in common make a lease, what tenancy has the lessee?

What leases can infants make, and what would be the tenancy of the lessee?

Suppose the husband to demise the wife's lands, and she survive her husband, what positive or contingent tenancy has the lessee?

What tenancy has a lessee by lease from an idiot or lunatic; and to have a secure tenancy for the term, what course should be adopted? and by what means can idiots and lunatics surrender and renew leases?

Mortgagor and mortgagee:—What separate right has each to lease mortgaged premises? and what would be the lessee's tenancy holding a lease from the one without the concurrence of the other?

State the general outline of the usual covenants and provisions in a lease of a house.

What is the difference between the *vivum radium* or living pledge or mortgage, and the *mortuum radium*, or dead pledge or mortgage?

What is the distinction between estates in remainder and those in reversion?

What attestation is requisite to the valid execution of a will? and if a form of attestation be subscribed, what should be that form?

In preparing a bond from two persons, what should be attended to in the form of it, to make it effectual against both or either?—and supposing one of the obligors to be merely a guarantee for the other, what should such guarantee require for his security from his co-obligor?

What is a deed of partition, and by whom may it be made?

[The other questions will appear in the next number.]

#### PROVINCIAL LAW LECTURES.

*To the Editor of the Legal Observer.*

SIR,—I have perused with considerable interest the different articles which have appeared in the *Legal Observer*, on the establishment of law lectures; and I am happy to discover that your opinions coincide entirely with mine on this subject.

It has long been a source of regret to me, that in many of the principal provincial towns in England, a system of law lecturing has never yet been established; but that never has been the cause of wonder, when I observed the supineness of the metropolis in this respect. Now that the authorities there appear to be awaking from their lethargy, there is reason to hope that

students in the country will be able to reap similar benefits to those promised in London.

Most of the large towns in England possess law societies; and it would surely not be a very difficult matter for the members of those societies to institute lectureships on the different branches of the law. The expense would be trifling; and, if I may judge of other students by myself, would be repaid fourfold. Many of the members of the law societies are men of great talent, and in every respect qualified to discharge the duties of lecturers; and an institution of this description would tend greatly to relieve solicitors in their task of imparting legal instruction to their articled clerks. The town of Manchester, for instance, can now boast the establishment of a system of law lectures; and I believe that neither the lecturers nor their auditors have ever yet had reason to regret it.

In conclusion, let me unite my humble wishes with those of numerous of my fellow labourers in the mazes of the law, that before long every principal town throughout the United Kingdom may be enabled to point out with pride, an institution for the instruction of the rising generation in those principles upon which the lives, liberties, and happiness of the people in a great measure depend.

*Leeds.*

*Z.*

#### SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

The first public meeting of this society was held on Saturday, 6th June, at the rooms of the society, 21, Regent Street.

Lord Brougham, the president, said that the society had been established for the purpose of promoting that most important of all designs, the amendment of the law of this country. It proposed to found that amendment not on any rash or speculative views, but on sound principles, both as to the objects to be attained, and the manner of effecting them. And certainly they had hitherto no reason to complain of not being approved by the community at large, or of not having secured the approbation of the government of the country and the members of both houses of parliament. During nearly two years, which the society had been in operation; it had made very considerable progress in the great design which its members had proposed to themselves. The first course they took was this: they divided themselves into committees, each of which devoted itself to one particular subject,—one engaged in the consideration of the criminal law: another in that of the language of acts of parliament; another on the law of real property; and the rest on the various branches of the law to which their attention might be beneficially directed. The reports of those separate committees had been printed at different times, and extensively circulated; and it appeared to the members that the time had at last arrived when it was fit to call on the great body of their fellow-subjects to

assist in the labours and share in the counsels of the society. They had therefore thought it proper to summon a general meeting of persons interested in the objects of the society, to hear the course which it was about to take, and the fruit which its labours were yielding. He had always felt a deep interest in the subject of law reform, and had, as many of them knew, devoted to it a great portion of his life. He had laboured for it strenuously, and, he would add, not hopelessly, and although he had met with disappointments, he believed they might now look forward to the pleasures of success. The first thing they did was to report in favour of certain legislative measures, and he was requested by his colleagues to take under his protection one or two of those measures which required the sanction of parliament. He had brought forward no less than nine of these during the session before last, out of which number, four had become the law of the land, and, in his opinion, were of very great benefit.

One of these bills, which was that for the merging or extinction of *terms outstanding* which had been satisfied, had been entirely approved of by the profession, and still more by those for whose benefit it was made, by the landowners and others, to whom security of title and cheapness of conveyancing was of very great importance.

Another of these bills, and a very important one, related to the law of *debtor and creditor*.

He had brought forward that bill, though it proceeded less from the society than the other, and he took more of the responsibility with regard to it on himself. That was the bill for the *Abolition of Imprisonment for Debt*. It had been considerably modified in committee by Lord Lyndhurst, Lord Cottenham, and himself, and had subsequently passed into a law; so that imprisonment for debt had ceased to exist in this country. It existed only for the suppression of crime, and that was the true principle. For reaching at the property of a debtor, he believed that the arrest on *meane process* was much more effectual than the arrest on execution; for when a man became insolvent it was quite useless to bring an action against him, as Mr. Commissioner Fane had very clearly proved, there being no less than 12 steps in the law which a man must take before execution; and each of these steps was not unattended with serious expense. In arrest on *meane process* it was said that the property of the debtor was at once got hold of, whereas, long before the 12th step in arrest on execution was arrived at, the debtor had made away with, or spent, or secreted his means. The law now said, that any man who was indebted might apply to the court of bankruptcy for protection, unless it was proved that he had been guilty of fraud or gross extravagance. In such cases, if he made away with his property or refused to give it up, then his imprisonment was for contempt. He was bound to admit that there was great division of opinion on that point, and he knew that in the profession and in the trading world it was said that they had gone a little too far in

favour of the debtor, and that they ought now to retrace their steps; that if they could not retrace their steps, which he (Lord Brougham) thought it would be a very difficult thing to do, they should give the creditor every protection, security, and consideration, and go as far in his favour as they had done in that of the debtor. That was his opinion, and, therefore, he had listened to the arguments urged on the subject by tradesmen as well as by members of the profession, and was disposed to give them the aid of measures which, though not destroying what had already been done, might act as a set-off in favour of the creditor. The presumption must always be against the man who did not pay what he owed, and that the creditor was in the right. The creditor could not be to blame, but the debtor might. The imprisonment of a debtor for fraud was no grievance, but a necessary part of the administration of public justice. There was one part of the bill which he was sure would work very ill indeed, a part undertaken by the Lord Chancellor, whose humanity had been exercised in favour of debtors under 20*l*. His noble friend at first agreed with him, but said that small debt courts should have the power of imprisonment. However, there came out at the time such statements of the unspeakable horrors of the prisons attached to these courts, that no one could resist his noble friend's proposition that imprisonment in such cases should be abolished altogether. The unfortunate thing, however, was, that it was not considered that almost all the debts in the country were small debts. The tradesmen very justly complained that out of 900 debts on their books, 890 were under 20*l*., for men took care not to get credit for more. He had moved for the appointment of a committee to consider whether the act might not be remedied by putting the small debtor on the same footing as the larger.

Another measure which had been successful, having been brought forward on the reports of the society, was for *shortening deeds* and lessening the expense of conveyancing. His lordship shortly explained the causes which had rendered such a measure necessary, and quoted instances. The measure had produced the best results, he said, with respect to settlements, devises, and wills, and more particularly it had proved a boon to those connected with the land in regulating the subject of farm leases. They were preceding bit by bit, and God forbid that they should do otherwise. He should say that it would be the greatest reflection on the law that a person should come down, and say, "Here is a new code, which I have invented, and which I wish to be established." It was impossible, he believed, to codify too much; and the criminal code was now waiting for Mr. Starkie's report.

The criminal code would have been ready in a short time, but the Lord Chancellor said, "I must beg you to step in your code till we see how we are to remove the penal statutes which deform our statute-book, and which have occupied the attention of the commissioners for so

many months." Their six months' labour had borne the fruits of the Lord Chancellor's bill, now before the House of Lords. If the people were called on to obey the law, it was the bounden duty of the state to let the law be so arranged as that they could understand it. It was bound to give them a code of criminal laws; and he hoped soon to find that part of the society's labour attained.

Lord Montague proposed the first resolution, which was as follows:—"That the well-considered and practical amendment of the law is of the utmost importance to all classes of the community, and that the subject may be advantageously promoted by a society composed of members of all classes of the legal profession, and of other persons not belonging to that profession, desirous to co-operate with them." His lordship said, that if he considered the resolution anything beyond the affirmation of a principle, he should feel that he was guilty of a great intrusion. As a country gentleman he was deeply concerned in the effectiveness of the law bearing on the land of England. He was rejoiced to see that the members of the society were such as to justify the expectation that from their united labours active operations would result. They were practically acquainted with the imperfections of the science of which they were masters. He and others, not professional, knew those imperfections, not by the knowledge of the principles of the law, but of the consequences litigation entailed. There was not one noble lord in the committee which recently sat to consider the peculiar burdens on land, who did not leave it with the impression that the present state of the law was one of the greatest grievances to which the proprietors of land were subjected, and that while every other class of the community was interested in improving the law, there was none more especially interested than they in such improvement and simplification. This had been brought before them very strongly in the shape of a question and answer, which he hoped, without disrespect to his lordship in the chair, he might quote. A legal friend of his was asked what he believed was the greatest burden upon land in this country? His answer was, "the Court of Chancery." He would leave it to any one to determine whether the simplicity of the reply was not as unanswerable as its truth was undeniable. But the committee did not rest on this mere general allegation, however undeniable, for they went into special facts and inquiries—they went into the examination of men of the highest learning and experience in their profession, and he believed that all were impressed with the opinion that reform in this matter was required. It appeared in the course of the inquiry that one of the best steps taken in that direction was the system of registration, that the value of landed property and its security had been considerably increased thereby.

Mr. Serjeant D'Oyley seconded the resolution, which was then put and carried.

The Marquis of Clanricarde moved the next resolution, which was as follows:—"That the

transfer of real property is greatly impeded by the existing system of conveyancing, and that the market value of land is kept down below its proper value." The noble Marquis commenced by saying, that it was a very remarkable fact that the members of the late committee of inquiry, in politics so wide apart, should yet, on the substance of the resolution he had to propose, be so completely agreed. One report had been made by the majority, and another most able one (he trusted he might be permitted to say, without expressing any opinion in other respects,) by the minority, but when they came to recommend what should be done to relieve land from its burdens, they arrived on the first point at the same result. Now who had anything to do with real property or with the purchase and sale of it, without having had the grievance complained of brought home to him? He alluded, in saying so, not merely to the uncertainty, but the expense and delay produced. There was the greatest difficulty in forcing a sale of land on an unwilling purchaser, and effecting those sales, or raising money on real security, was often almost a ruinous course to those who attempted it. The noble Marquis concluded by moving the resolution, which was seconded by

Lord Beaumont, who, as having presided over the late committee alluded to by previous speakers, confirmed what had been said with regard to its proceedings. It was impossible for any one to have been present in the house during the examinations on real property, without being impressed with the conviction that the country was burdened beyond all others in that respect. It was gratifying to think that there was a great probability that the landowners would be relieved from the burden, now that the labours of the society would be devoted to the subject. The noble lord concluded by seconding the motion, which was put and carried.

Mr. Bethell moved the third resolution, which was, "That the proceedings of the Court of Chancery required great and extensive amendment." The learned gentleman said that he wished to speak of the Court of Chancery as an instrument which most usefully affected the property of men, and it was for that very reason he required that its improvement should keep pace with the necessities of the age. The resolution which he had to move rightly discriminated between the principles of the court and its procedure. The procedure required great vigilance—unceasing watchfulness in striking away the defective law—amending those defects, and accommodating the amendments to the improved state of society. In speaking of the procedure, it might be expected that he should draw their attention to some instances in which it required great amendment. There was one point which he would now refer to, for it was a subject which had attracted general attention. It regarded the simplification of justice in the Court of Chancery with respect to charities. So amply endowed was this country; so much did it re-



joice in the universal diffusion of charity, that such trusts formed a very large portion of the administration of justice in the Court of Chancery. But the expenditure was too heavy, and there existed a great facility on the part of judges in giving way to the desire that the administration should be borne out. He would instance the case of a small charity in Norfolk, by which 18 cottages were left in trust for the use, rent free, of as many deserving labourers. Some peculiar circumstances led to a suspicion in the neighbourhood of a breach of the trust. Costs were incurred. An order was perhaps too hastily made that those costs should be borne by the property. It was sold in consequence, intended, as it was in the outset, as the means of support for deserving labourers. The solicitor permitted the property to be put up in 18 separate lots, for which 18 separate titles were made out; the consequence was, that out of the sale which realized 1,600*l.*, 1,400*l.* were deducted for expenses incurred.

Mr. Bethell, after some observations on this case, referred to the possibility of having in Chancery a proceeding long known with advantage to the common law, and which, if known there, also might realize the means of conveying cheap and esteemed justice to the poor. It would operate, he thought, as a species of reconciliation to the parties, and frequently prevent the necessity of litigation. What he alluded to was that the judges of the court should attend at chambers to receive in some extemporary form a great number of applications. He would take the case of a poor man to whom a legacy of 100*l.* had been left. He would suppose the testator had given his principal estate to another person, and that such principal estate was not of such a nature as that the legacy of 100*l.* could be easily got out of it. How in such circumstances was the poor man to obtain his right? He would suppose that he could go to a judge's chambers to discover proof there. The executor would have questions put to him by the judge, and if the means were not provided for immediate payment, at least a satisfactory assurance would be given, and litigation thus be prevented. In this and many such cases the order of the judge at chambers would be sufficient.

He would allude again to that subject of complaint, that, when the decree was pronounced, the suitor, instead of welcoming it as the fruits of his toils, found himself in a worse position than ever, and encumbered with new losses and disappointments. He alluded to those investigations in the Master's office. Sufferings were produced which the Master had no power to control. Now if there was a power to go from the Master to a judge at chambers, a great deal of time, expenditure, and "the hope delayed, which maketh the heart sick," might be avoided. During the last 20 years great things had been done in ameliorating the law. When Lord Lyndhurst first received the seals the work began, and it had continued while his lordship in the chair was in office, and since. But of necessity the amend-

ments of the law must be slow, and therefore the subject invited suggestions from all quarters. As for the chancellors, the legislature had armed them with a statute giving them large powers, and therefore it became the society to deliberate how these might best be exercised for its purposes.

Mr. Spencer seconded the motion, and

The Chairman, in putting it, complimented Mr. Bethell on his valuable suggestion, and expressed his entire approbation of it. The judges of the Chancery Court were now five in number; two more than he had thought requisite, and they might be most usefully employed in affording at chambers a common ground where suitors themselves might meet without professional advisers.

The resolution having been carried, Mr. Commissioner Fane moved the next resolution which was—

"That the law of debtor and creditor is causing great dissatisfaction in the trading and other branches of the community, inasmuch as it is neither sufficiently considerate towards the honest debtor, nor sufficiently stringent towards the dishonest debtor."

The learned commissioner commenced by referring to the acknowledgement made by the noble lord in the chair, that he thought the time had come for considering the question of arrest on means process, with a view to the interests of the creditor. He then passed to the statement in the resolution, that the law was not sufficiently considerate towards the honest debtor. He had been engaged in the administration of the Law of Debtor and Creditor, and though the result had been to convince him that for one honest there were 1,600 dishonest debtors, still it was impossible to deny that occasionally there did turn up a case of honesty on the part of a debtor, and in many cases an impression had been created on his mind that the honest debtor did not meet with the consideration due to his misfortune. It appeared to him that this was so because the body of creditors, or the majority of them, had not power to bind the minority. Why should it be so? Why should one resisting creditor have the power to force the whole affair into bankruptcy? It was quite true that an honest man did not become dishonest because he had been bankrupt, but why should he be subjected to so cruel an imputation as that name implied? He entirely concurred in what had fallen from the noble chairman, that the law was not sufficiently stringent towards the dishonest debtor.

Mr. J. Stewart seconded the motion, which was put and carried, after having been supported by a gentleman who spoke in strong terms on the leniency of the law towards dishonest debtors, and on the liberality with which creditors were generally disposed to act.

The Duke of Richmond moved the next resolution which was—

"That great as are the amendments recently effected in the criminal law, much yet remains to be done both as to punishment and procedure, more especially as regards the system of

secondary punishments, and the treatment of juvenile offenders, and the due preparation of the criminal code and digest."

The noble Duke said, that though he might be charged with presumption in proposing such a resolution, still he was induced to do so by his anxiety to promote the interests of the society, and assist in the amendment of the law of the land. If they who had property were anxious to improve the civil law of the country, must they not also be so to improve the criminal law? Presiding, as he often did, at the quarter sessions, he had often brought under his notice cases of hardship caused by the law, which were a disgrace to its efficiency. Sitting at a court of quarter sessions, presided over by Serjeant D'Oyley, he had seen children of 10, 11, and 12 years of age, brought up to be tried for felony, and, if convicted, having the brand of felon imprinted on their brows. Was it right that a child of 10 or 12 years old, who hardly knew right from wrong, should be brought before the grand jury, tried by the verdict of twelve men, and if he stole to the amount of an egg, branded as a felon, and when that is so it is very difficult even after to make him follow an honest course of life. He would give no opinion how the existing codes of our criminal law ought to be remedied, but he ventured to tell them that they could not better perform their duties to themselves and their country than by getting rid of those evils which were so rapidly increasing.

The Marquis of Normandy, in seconding the resolution, expressed his cordial interest in the success of the society, and regretted that circumstances having removed him from the country at the time when he first became a member, he was consequently less conversant than he wished to be with the details of its proceedings.

Lord Radnor moved, and Mr. Ewart seconded, the sixth resolution, which was agreed to. It was as follows:—

"That the existing system of framing public acts of parliament leads to a mode of drawing them deficient in closeness and uniformity of language, and that it is desirable that some measures should be adopted to secure these manifest advantages to the houses of parliament, the courts of justice, and the public at large."

The last resolution, proposed by Mr. Joseph Hume, seconded by Mr. Duckworth, and agreed to by the meeting, was—

"That in an especial manner some improvement in the course of legislative procedure is required for transacting the private and local business of the country in parliament in a manner satisfactory to all parties, and consistently with the undoubted privileges of parliament."

The Duke of Cleveland, Lord Denman, Lord J. Manners, Mr. Lynch, Mr. Starkie, Mr. Hawes, and others were present.

After a vote of thanks to Lord Brougham for his conduct in the chair, the meeting broke up.

## ANALYTICAL DIGEST OF CASES. REPORTED IN ALL THE COURTS,

### Common Law Courts.

## II. PRINCIPLES OF COMMON LAW AND GROUNDS OF ACTION.

### ATTORNEY.

*Trespass.—Liability.*—Where an attorney by his conduct induces a sheriff to make a wrongful seizure under a writ of execution, he is equally liable with the sheriff in an action of trespass.

The attorney in an action gave a writ of *facias* to the sheriff, on which he indorsed, "The defendant resides at Wolverton, in Bucks, and is an innkeeper," by reason of which the sheriff was induced to seize the goods in the house where the defendant resided, although it turned out that the house and property belonged to another person.

*Held*, that the attorney was liable in an action of trespass. *Rowles v. Senior*, 32 L. O. 14.

### BILL OF EXCHANGE.

1. *Bill drawn by A. on himself and accepted by B.*—John Hart drew a bill payable to himself or order, addressed to John Hart; C. wrote across this, "accepted, H. J. C. *Held*, that C. could not be sued as acceptor of such bill of exchange. *Davis v. Clarke*, 6 Q. B. 16.

Cases cited in the judgment: *Gray v. Milner*, 8 Taunt. 739; *Pothill v. Walter*, 5 B. & Ad. 114; *Jackson v. Hudson*, 2 Campb. 447.

See notes on this case, 31 L. O. 545.

2. *Authority to indorse.*—A, in a letter to B., enclosed a bill drawn on B., and another bill drawn by C. on D. for the same amount. Before the letter arrived B. absconded, leaving a letter for E., authorising him in B.'s name to indorse any bills which might be remitted to B., and to deliver such bills to F., or to negotiate them, and deliver the proceeds to F., against any liability F. might be under for B.'s account.

*Held*, that the authority only applied to bills remitted to B. as his own property; and that the bill drawn upon D., and which D. accepted, was not such a bill; and, therefore, that an indorsement thereof by E. in the name of B., gave no right of action to G., an innocent holder, against D., the acceptor.

*Semble*, that, if B. had himself indorsed the bill, an innocent holder might have sued upon it.

*Query*, how far material allegations on the record, not traversed, are to be taken as admitted for the purpose of the cause. *Fearn v. Filica*, 7 M. & G. 513.

### CHOSE IN ACTION.

See *Shareholder*.

### COAL MINES.

See *Lease*, 3.

### CONSIDERATION.

A promise by the defendant to pay the plain-

tiff an annuity, in consideration of an agreement between them to abandon mutual and unsettled claims and accounts, is binding: so held upon motion in arrest of judgment, in an action of assumpsit, where the general issue had been pleaded, and a verdict thereon found for the plaintiff. *Llewellyn v. Llewellyn*, 31 L. O. 159.

## COVENANT.

See *Trade, restraint of*; *Lease*, 1, 2.

## CRIMINAL INFORMATION.

*Slander*.—The court will not grant a criminal information for unwritten words imputing to a justice malversation in his office, if the words neither were spoken at the time when the justice was acting, nor tended to a breach of the peace. *Esparto Duke of Marlborough*, 5 Q. B. 955.

See *Esparto Chapman*, 4 A. & E. 773; *Rae v. Burn*, 7 A. & E. 190.

## DEVISE.

*Vesting of estate*.—*Descent to persons of particular name*.—A testator devised real estates to his son and heir at law, Reginald H., for life, remainder to his first and other sons in tail, remainder to his daughters in fee; and for default of such issue, to his nephew Reginald H., for life, remainder to Richard H., son of his said nephew, for life, remainder to his first and other sons in tail; and in default of Richard's being alive at his father's death, or in case of his being alive and taking an estate under the will, and dying without issue male, then to the use of the male heir who should be in possession of the ancient estate at M., belonging to the H. family, for life, and to his first and other sons in tail; and, for default of a male heir being in possession of the ancient estate at M., or in default of issue male of such heir male, then to the use of the testator's own right heirs, being of the name of Heber, in fee.

Reginald H., the son, enjoyed the estate for life, and died without issue; then Reginald the nephew, and Richard, successively enjoyed it for life, and the latter died without issue; and at his death there was no heir of the testator existing of the name of Heber. *Held*, that the ultimate limitation in fee vested on the death of the testator, in his son and heir at law, Reginald H. *Wrightson v. Macaulay*, 14 M. & W. 214.

## DISTRESS.

*What is a demise at a rent, under which distress may be taken*.—The proprietor of a house and of a marl pit and brick mine demised the house, by unwritten agreement, to D. from a day named; and it was at the same time agreed between them, without writing, that D. should take the marl pit and the brick mine, and should pay quarterly at the usual quarter days, 8d. per solid yard for all the marl that he got, 1s. 8d. per thousand for all the bricks that he made. D. took the marl and made bricks accordingly, and paid the stipulated sums for a time; but they afterwards fell into arrear.

*Held*, that the agreement for the marl pit and

brick mine was a demise of the land from year to year, at a rent capable of being ascertained with certainty, and for which, therefore, the lessor might distrain. *Daniel v. Gracie*, 6 Q. B. 145.

Authorities cited: Co. Lit. 96, a.; 142, a.

## FISHING.

See *Notice of Action*.

## FRAUDULENT ASSIGNMENT.

*Who may allege the fraud*.—*Evidence*.—*Recital in warrant*.—*New trial*.—An assignment of goods in fraud of creditors is valid as between parties to the deed, and as between either party and a stranger. A sheriff claiming to seize the goods on behalf of a judgment creditor is a stranger within this rule, if he does not prove the legal authority under which he is seized on behalf of such creditor. For this purpose it is sufficient, in trespass for the seizure, if he prove the writ. And there is some evidence of the writ, if the plaintiff puts in the sheriff's warrant to his officer, and that recites a writ at the suit of the judgment creditor.

The judge, in an action brought against the sheriff, as above, left it to the jury to say whether or not the parties to the alleged fraudulent conveyance meant anything to pass by it; the jury found in the negative; and a verdict was taken for the defendant. The case went to the jury without notice of any proof that the sheriff acted under a writ sued out by the judgment creditor, the effect of the recital in the warrant being overlooked by all parties. A new trial was moved for, on the ground that the sheriff, if standing in the situation of a stranger, could not impeach the deed; and the court was of this opinion; but, on showing cause, the effect of the recital in the warrant was pointed out and admitted by the court.

*Held*, that a new trial ought not to be granted on the ground merely that the cause had been tried on an assumption that the alleged fraud would be a defence to the sheriff, without taking the jury's opinion on the effect of the recital as showing his right to make such defence. *Bessey v. Windham*, 6 Q. B. 166.

Cases cited: *Doe d. Roberts v. Roberts*, 2 B. & Ald. 367; *Haynes v. Hayton*, 6 Law J., K. B. (O. S.) 231; 7 B. & C. 293, n. (1); *Goss v. Quinon*, 3 Man. & G. 825; *Wright v. Doe d. Tatham*, 7 A. & E. 313; *Crease v. Barrett*, 1 Cro. M. & R. 919; S. C. 5 Tyr. 458; *De Ruten v. Farr*, 4 A. & E. 53; *Glave v. Westworth*, York Spring Assizes, March 7, 1842, before Parks, B.

## HORSE-RACE.

*Decision of steward binding*.—The plaintiff entered his horse for a steeple chase, one of the conditions being, that no groom or professional jockey should be allowed to ride; and another, that all disputes and other matters should be decided by the steward, whose decision should be final. The plaintiff intended his horse to be ridden by one W., but before the day of the race, was informed by the steward that he considered W. a professional jockey, and that the horse, if

ridden by him, would be no horse in the race. The plaintiff insisted that *W.* was qualified; and on the race day, notwithstanding a similar intimation from the steward to the plaintiff, *W.* rode the horse, which came first. On the following day, the steward pronounced the second horse to be the winner, and by his directions the stakes were paid to the owner of that horse. *Held*, that the steward had decided the question within the meaning of the condition; that his decision was final (although it was not made after hearing both parties); and that the plaintiff could not recover the stakes from the stakeholder. *Benbow v. Jones*, 14 M. & W. 193. See *Evans v. Pratt*, 3 M. & G. 759, 5 Scott, N. R. 382; *Regina v. Smith*, 13 Law J., N. S., Q. B., 166; *Walmesley v. Matthews*, 3 M. & G. 133, 3 Scott, N. R. 584.

#### INSOLVENT.

1. *Ca. Sa.*—No action of trespass for false imprisonment will lie against a plaintiff who, without notice, takes a defendant in execution for a debt, in respect of which he has been discharged under the Insolvent Act.

But if the plaintiff issues a *ca. sa.* maliciously, and for the purpose of oppression, he is liable to an action on the case. *Ewart v. Jones*, 31 L. O. 115.

2. *Schedule.*—*Misdescription.*—Where an insolvent debtor inserts in his schedule such a misdescription of a debt that it removes the creditor from a class entitled to special notice to one not so entitled, the insolvent is not discharged from the debt, although there has been no fraud or culpable negligence or evil intention.

*Quare*, whether a misdescription of the name of a creditor not fraudulent but calculated to mislead, would prevent the defendant from being discharged from the debt. *Hoyles v. Blore*, 31 L. O., 512.

And see notes, p. 499.

#### INSPECTION.

*Transfer books.*—In an action by the holder of stock against the Bank of England, where the question in dispute was, whether certain stock standing in the plaintiff's name had been legally and properly transferred into the name of other parties, the court granted permission for the plaintiff to inspect the transfer books of the bank, as far as they related to this particular transfer. *Poster v. Bank of England*, 31 L. O. 559.

#### INTEREST.

*Not stopped by bankruptcy.*—Where a party is indebted to a trader in a sum bearing interest, the assignees may recover interest accruing subsequently to the bankruptcy, although there be no express reservation of interest. *Pott v. Beavan*, 7 M. & G. 604.

#### LANDLORD.

*Repairs.*—In an agreement for a tenancy of buildings for a term, the landlord to do the repairs, there is no implied condition that the tenant may quit if the repairs are not done. *Surplice v. Farnsworth*, 7 M. & G. 576.

Case cited in the judgment: *Izon v. Gorton*, 5 N. C. 501; 7 Scott, 537; *Salisbury v. Marshall*, 4 C. & P. 65; *Edwards v. Hetherington*, Ryan, & M. 268; 7 D. & R. 117; *Cowie v. Goodwin*, 9 C. & P. 378; *Hart v. Windsor*, 12 M. & W. 68.

#### LEASE.

1. *Power.*—*Joining or severing parcels.*—*Waste.*—*Suit at mill.*—*Evidence of what are "casual and reasonable covenants."*—Lands were devised for life, remainder over, with power to the tenant for life to lease "in possession or reversion, for one life or for two or three lives, or for any term or number of years determinable upon one life or two or three lives, any part of the said premises usually so leased;" "so that there be reserved in every such lease, during the continuance thereof, the ancient and accustomed rents and heriots for the premises therein contained, or more; and so that, in every one of the leases so to be made and granted by virtue of the several powers aforesaid, there be contained the usual and reasonable covenants;" "and so as no clause or clauses be contained in any of the said leases giving power to any lessee to commit waste, or exempting him, her or them from committing the same."

1st. *Held*, that a lease by the tenant for life comprehending, at a single rent, as well some of the lands devised, as others not devised and not previously let with those devised, was bad as to the lands devised, although the rent reserved, with the heriots, &c. was in proportion to the rents, &c. previously reserved on all respectively.

2ndly. But that, against a party claiming as heirs of the lessor, the lease was good as to the lands not devised.

3rdly. That if the lease had comprehended only lands devised, it would not have been avoided by proof that the lands included in the lease had never before been let by a single demise; it also appearing that the rents, &c. reserved were in proportion to the rents, &c. formerly reserved.

4thly. That the lease was not avoided by its containing a stipulation, that the lessee should build a new dwelling-house, and might pull down an out house and use the materials for so building; no other facts being proved to show that this would amount to waste.

5thly. *A.*, parcel of land devised, and leased by the tenant for life, had previously been demised by a lease containing a stipulation, that the lessee should do suit by grinding at a certain mill; but a later lease of *A.*, which was granted by the testator, and running when the will was made, contained no such clause. *Held*, that a lease by the tenant for life was not bad for not containing such a clause.

6thly. *C.*, also parcel of the lands devised, and leased by the tenant for life, had previously been leased by a deed, which contained the same stipulation immediately after the *reddendum*. The lease following this, which was granted by the testator, and running at the time of making the will, was lost. *Held*, (the

court having power to find facts on a special case stating as above,) that it was to be inferred that such a stipulation was a usual and reasonable covenant. And this, whether evidence (which was offered) were or were not admissible, that the testator had frequently leased other parcels of the manor which included A. and C., omitting the stipulation in all such leases, though the previous leases of those other parcels contained it.

7thly, *Held*, that a lease of C. by the tenant for life, which did not contain the stipulation, was therefore void. *Doe d. Lord Egremont v. Stephens*, 6 Q. B. 208.

Cases cited: *Doe d. Douglas v. Lock*, 3 A. & E. 705, 747; *Doe d. Bartlett v. Randle*, 3 M. & S. 99; *Doe d. Earl of Shrewsbury v. Wilson*, 5 B. & Ald. 363.

2. *Execution of leasing power.*—Power, under a will, to tenant for life to grant leases, so that in every such lease there be contained the usual and reasonable covenants, and “a condition of re-entry for nonpayment of the rent or rents thereof respectively to be reserved, in case the rent or rents be behind or unpaid by the space of twenty-one days, and for non-performance of the covenant, therein to be contained.”

Lease, with a covenant to repair, and proviso for re-entry if the tenant should suffer the premises to be out of repair, and should not repair the same “*within six calendar months next after notice.*”

*Held*, void, as a bad execution of the power. *Doe d. Egremont v. Burrough*, 6 Q. B. 229.

3. *Construction of lease of coal mines.*—The lessee under a lease of coal mines covenanted thereby, that they would deliver to the lessor two equal thirteenth parts of all coals which should be raised from the mines demised during the term, or would pay him quarterly the value thereof in money; and that, in case, at the end of the first quarter of any year, such quarterly deliveries should not have equalled in value, or such quarterly payments should not have equalled in amount the sum of 38*l.* 10*s.*, the lessee should also pay, at the end of every such first quarter, such additional rent or sum as should make up the sum of 38*l.* 10*s.*; and in case, at the end of the second quarter, such deliveries or payments for that and the preceding quarter should not have equalled in value or amount the sum of 75*l.*, then the lessees should also pay at the end of the second quarter such further sum as would make up 75*l.*; and in case, at the end of the third quarter, such deliveries or payments for that and the two preceding quarters should not have equalled in value or amount the sum of 112*l.* 10*s.*, then the lessees should pay, at the end of the third quarter, such further sum as would make up 112*l.* 10*s.*; and in case, on the 24th June, in any year, the deliveries or payments for that and the three preceding quarters should not have equalled in value or amount the sum of 150*l.*, the lessees should pay, on the 24th June, such an additional sum as would make up 150*l.*; it being the intent and meaning of the

parties, that the royalties thereby reserved should always amount to 150*l.* per annum at the least. *Held*, that in calculating the amount of royalties due to the lessor at the end of each year, the lessees were not entitled to set off the excess of royalty accruing in any quarter, against a deficiency in the previous quarter; but that the lessors were entitled at the end of each quarter, to the full sum of 38*l.* 10*s.* *Bishop v. Goodwin*, 14 M. & W. 266.

And see *Sheriff*, 1.

## MARKET.

See *Toll*.

## MORTGAGE.

The solicitor of a mortgagee, with a power of sale, refuses to desist from selling unless the mortgagor will pay expenses, with which he is not properly chargeable. *Held*, that money paid under such compulsion may be recovered back. *Close v. Phipps*, 7 M. & G. 586.

Case cited in the judgment: *Parker v. Great Western Railway Company*, 7 M. & G. 253; 7 Scott, N. R. 835.

## NOTICE OF ACTION.

*Fishing.*—*Owner of land.*—Where a statute requires notice of action for anything done in pursuance of it, such notice must be given in all cases where the party acts under a *good fide*, though mistaken belief, that what he does is in pursuance of the statute. Therefore where a statute enabled the owner of land, or his servants, to seize the rods and lines of any person unlawfully fishing thereon, and the servants of P. seized the rod of a person fishing on land which they believed was P.'s, but which in fact was not.

*Held*, that they were nevertheless entitled to notice of action. *Hughes v. Buckland*, 32 L. O. 38.

## PRESCRIPTION.

See *Toll*.

## RAILWAY.

1. *Fictitious Scrip.*—The directors of a railway scheme having determined not to issue scrip, the projector of the scheme and the secretary, without the sanction of the directors, altered the form of the scrip certificate so as to make it issuable by the secretary alone. The defendant, who was a jobber, sold to the plaintiff some of the scrip thus signed by the secretary, and the plaintiff afterwards finding it to be fictitious, brought an action to recover back the money paid. *Held*, that the proper question for the jury was, whether the plaintiff contracted to buy genuine scrip, or only such scrip of the company as was then in the market. *Lanert v. Heath*, 32 L. O. 108.

2. *Deposit.*—*Remble.* An action will not lie to recover the deposit paid for railway shares, since the company could not issue shares unless registered, and they could not legally register until the shareholders had executed the deed, upon which they would become partners. *Wallstabe v. Spottiswoode*, 31 L. O. 579.

3. *Provisional director.*—The attorney to a

projected railway company held himself out as responsible for all charges and expenses incurred before the deposits were paid, and in order to induce persons to put down their names on the provisional committee, he gave to several a guarantee to bear them harmless against such expenses. The scheme was afterwards abandoned. In an action by the attorney for money paid against a provisional director, to whom he had not given a guarantee, a verdict was found for the defendant, and this court refused a rule for a new trial, on the ground that the plaintiff had held himself responsible for these expenses, and must take the consequences. *Lloyd v. Harrison*, 32 L. O. 82.

## SHERIFF.

## 1. Execution, Seizure and sale of lease.—

Trespass against the sheriff for breaking and entering the plaintiff's dwelling-house. Plea, that the defendant entered under a *f. fa.*, and seized and took in execution a lease of the plaintiff's of the said dwelling-house, under which the plaintiff held and was possessed of the same, and, before the return of the writ, sold the term, and continued in possession of the house for the further execution of the writ. The plaintiff now assigned that the defendant continued in possession an unreasonable time after he had seized and taken in execution and sold the lease. To this new assignment the defendant pleaded, that the dwelling-house in the new assignment mentioned was not, at the time of the committing of the trespass newly assigned, the dwelling-house of the plaintiff. At the trial it appeared that the sheriff had sold the lease by auction, but that no assignment had been executed by him to the vendee. Held, that the seizure did not vest the term in the sheriff, but that it remained in the debtor until the sheriff executed an assignment to the purchaser; and that whether the word "sold" imported an actual assignment or not, the sheriff could not justify remaining an unreasonable time in the house; and therefore, that the plaintiff was entitled to have the verdict entered for him on the plea to the new assignment. *Playfair v. Meggison*, 14 M. & W. 239.

Cases cited in the judgment: *Taylor v. Cole*, 3 T. R. 299; *Giles v. Groves*, 9 Bing. 128; 2 M. & Scott, 192; *Re v. Deane*, 2 Show. 85.

And see *S. O. 5 D. & L. 72*, citing *The King v. Deane*, 2 Show. 68; *Taylor v. Cole*, 3 T. R. 299.

2. Attachment in county court.—*Bailiff*.—

*Supersedeas*.—Where goods are taken by special bailiffs under an attachment to compel an appearance in the county court, and an appearance is subsequently entered, whereupon the sheriff issues a *supersedeas* commanding the bailiffs to return the goods, but the bailiffs refuse to do so: Held, that the sheriff is not guilty of a conversion. *Brown v. Copley*, 7 M. & G. 558.

See 2 Roll. Abr. *Trespass* (O.) pl. 40.

3. *Keep of horses seized*.—A sheriff having seized horses under a *feri facias*, a third party claimed them; whereupon an interpleader

order was made directing the sheriff, upon payment of a certain sum into court, and of his "possession money," to deliver the horses to the claimant: Held, that the sheriff had no right to detain the horses until he was paid for their keep. *Gaskell v. Sefton*, 31 L. O. 77.

4. *Bail attachment*.—An attachment against a sheriff for not bringing in the body, was ordered to be set aside, on payment of costs and perfecting special bail. Those terms not having been complied with, a habeas issued to bring up the body of the sheriff. Whereupon the sheriff paid to the plaintiff the penalty in the bail bond (being double the amount indorsed on the writ) with costs. Held, that the plaintiff was not entitled to retain more than the amount indorsed on the writ and costs, and that he was bound to refund the surplus. *The Queen v. Sheriff of Middlesex*, 31 L. O. 466.

## SLANDER.

See *Criminal information*.

## SOLICITOR.

See *Mortgage*; *Railway*, 3.

## STAKEHOLDER.

*Chose in action*.—Several persons subscribe sums of money to abide the event of a horse-race. The money is deposited in the hands of a stakeholder. Each party draws a ticket containing the name of a horse, and the money is to be paid to the person who draws the winner of the race. A draws the ticket containing the name of the winning horse, and transfers his ticket to B, who was the stakeholder in an action of money had and received. Held, that B could not recover against the stakeholder, on the grounds that there was no privity between the parties in the first instance, and that the transfer of A's interest in the ticket to B was a mere assignment of a chose in action. *Jones v. Parker*, 31 L. O. 176.

## TOLL.

*Grant of market*.—*Inhabitants, how far capable of taking*.—*Custom*.—*Prescription*.—The word "toll" in a grant may include stallage. And, if the crown grant to H. and his heirs, that they may have and hold a market in the town of B. with all tolls and profits thence arising; but neither the crown nor H. has any right of toll in the town, if H. afterwards acquires the soil on which the market is held, he may claim stallage by virtue of the grant. So held by the Court of Q. B. Judgment affirmed by the Court of Exchequer Chamber.

Held, by the Court of Exchequer Chamber, that a modern grant by H., a subject, holding under the crown, as before mentioned, to which certain persons, styled inhabitants of B., are parties, granted that the said "inhabitants of B.," their heirs and assigns for ever, shall enjoy the market as freely as H. held it of the crown, and containing a covenant by H. that they shall do so, does not exempt from stallage an inhabitant not privy to the parties to such grant.

Such an exemption for the inhabitants of a

town, can be only by way of custom, not of grant or prescription. Whether an exemption or discharge from toll, other than stallage, could be claimed by such grant or prescription for inhabitants generally, *quæra*. *Lockwood v. Wood*, 6 Q. B. 31.

Cases cited in the judgment: *Hedley v. Welhouse*, Moore, 474; *Bennington v. Taylor*, 2 Lutw. 1517; *Rex v. Corporation of Maidenhead*, Palm. 76, 86; *Hickman's case*, 2 Roll. Abr. 123; *Earl of Egremont v. Saul*, 6 A. & E. 924; *Wright v. Bruister*, 4 B. & Ad. 116, 117; *Stampe v. Burgesse*, 2 Roll. Rep. 73.

Cases cited on the judgment in error: *Gatewood's case*, 6 Rep. 59, b.; *S. C.*, South v. *Gatewood*, Cro. Jac. 152; *Anon*, 1 Dyer, 100, a, pl. 70; *Fitch v. Rawling*, 2 H. Bl. 393; *Tyson v. Smith*, 9 A. & E. 411, 412; 6 A. & E. 745; *Abbot v. Weekly*, 1 Lev. 176; *Baker v. Brereman*, Cro. Car. 418; *Bree v. Chaplin*, 2 Eas. & Y. Tithe C. 270.

#### TRADE, RESTRAINT OF.

**Penalty or liquidated damages.**—Breach of covenant not to carry trade within certain limits. —The defendant, by deed, assigned to the plaintiff his business as a surgeon and apothecary, carried on by the defendant in Park Street, Camden Town; and the defendant covenanted, that he should not nor would, directly or indirectly, by himself, or in co-partnership with any other person or persons, carry on or exercise his practice or profession as a surgeon and apothecary, or either of them, either by residing or visiting any patient within the distance of three miles from the then place of business of the defendant, in Park Street aforesaid: and that in case of any breach of this covenant, the defendant should and would pay to the plaintiff the full sum of 500*l.*, to be recovered against the defendant as and for liquidated damages, and not as a penalty. After the execution of this deed, the defendant attended several ladies in their confinement, within the three miles, on one occasion received a sum of 14*l.* 14*s.* for his services; but he attended these persons with the knowledge and consent of the plaintiff, in consequence of a request by him that the defendant should for a time continue to visit the patients, to keep the connexion together: and the jury, in an action on the covenant, found that the defendant in these instances exercised the practice and profession of a surgeon, for the purpose of assisting the plaintiff: *Held*, 1st, that for a breach of this covenant the measure of damages was the full sum of 500*l.*; but 2ndly, that the above facts did not constitute a breach of the covenant. *Rawlinson v. Clarke*, 14 M. & W. 187. See *Green v. Price*, 13 M. & W. 695; *Cordwint v. Hunt*, 8 Taunt. 596; *West v. Blakeway*, 2 M. & G. 729; 3 Scott, N. R. 199.

#### TRANSFER OF STOCK.

A. transfers stock to B. and accepts the money. The transfer was executed according to the directions given by the 11 Geo. 4, and 1 W. 4, c. 13, s. 13, except that the acceptance by the transferee was not in writing as required by that statute.

*Held*, in an action by A. against the Bank of England for the amount of stock so transferred, that the provision of the statute with regard to the mode of acceptance, was merely directory, and that the transfer being valid, A. had no right of action against the bank. *Foster v. Bank of England*, 32 L. O. 37.

#### TROVER.

**Special damages.**—In an action of trover by a carpenter for the tools of his trade, it was alleged in the declaration, by way of special damage, that the plaintiff was for some time prevented following his business of a carpenter, and damages given in respect of such claim.

*Held*, 1. That special damages may be recovered in an action of trover. 2. That the damage was the natural and legal consequence of the act, and the court refused a rule to reduce the damages, on the ground that the injury alleged to be sustained was too remote. *Bodley v. Reynolds*, 32 L. O. 61.

#### TRUST.

**Money had and received.**—*Nunquam indebitatus*.—Where money has been received by A. upon trust to make payments of an unascertained amount, and to pay the surplus to B., B. cannot sue A. for money had and received while the trusts remain open.

*Semble*, (per *Cresswell, J.*) that where there is a contract between two parties under seal, the one cannot sue the other, as upon a simple contract, in respect of the subject-matter of such speciality contract.

B. assigned a debt due to him to A., in trust to pay, 1st, certain costs; 2ndly, a debt due from B. to C.; and thirdly, to pay over the surplus to B. The amount of the costs and of the debt due from B. to C. had not been ascertained. *Held*, that B. could not maintain an action against A. for money had and received.

*Held*, also, that it was not necessary for A. to plead the deed, but that the defence was open to him under *never indebted*. *Edwards v. Bates*, 7 M. & G. 590.

Cases cited in the judgment: *Roper v. Holland*, 5 A. & E. 99; 4 N. & M. 668; *Case v. Roberts*, Holt, N. P. C. 500; *Weston v. Downes*, 1 Dougl. 23; *Power v. Wells*, Cowp. 818; *Atty v. Parish*, 1 N. R. 104; *Filson v. Warwick Gas Light Company*, 4 B. & C. 962; 7 D. & R. 328; *Filmer v. Burnby*, 2 M. & G. 529; 2 Scott, N. R. 689.

#### VENDOR AND PURCHASER.

**Delivery order.**—Plaintiff bought of defendant, and paid for, hops which lay at the warehouse of F., having been placed there by a party who had sold them to defendant. After the sale, plaintiff was informed that the hops were at F.'s, had them weighed there, and took away part. Some days after he applied for the residue; but they had been taken away in the mean time by a creditor of the first seller. Defendant had not given plaintiff a delivery order, nor had he demanded one.

*Held*, that F. had the residue of the hops in his possession as agent to plaintiff, and the de-

defendant was not liable to plaintiff for the non-delivery of them.

Therefore, plaintiff having brought assumpsit for the non-delivery, and defendant having pleaded that he did deliver: *Held*, a misdirection to leave it to the jury, whether the defendant ought to have given plaintiff a delivery order. *Wood v. Tussell*, 6 Q. B. 234.

VESTING.

See *Devise*.

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

*Brown v. Bamford*. June 6, 1846.

RESTRAINT ON ALIENATION BY A MARRIED WOMAN.—CLAUSE AGAINST ANTICIPATION (IN A WILL.)

*A testator bequeathed certain property upon trust for the separate use of a married daughter for life, until bankruptcy or insolvency, and to pay the income unto whom she might appoint when and as the same should become due, but not by way of assignment, charge, or other anticipation thereof; her receipts, notwithstanding coverture, to be sufficient discharges for the income. There was a gift over in trust for her children: Held, that the daughter could not assign her life interest.*

THIS was an appeal from the Vice-Chancellor of England, who decided, that there was nothing to restrict the power which the daughter had to charge the income of the trust property under the general direction to pay such income to her for her separate use. His Honour also thought, that the receipt clause should have expressed that her receipts and that no other receipts should be sufficient discharges. The case is reported in 11 Simons, p. 127. The judgment of His Honour was affirmed by the Chancellor on appeal, but it being represented that the decision did not give satisfaction to a large portion of the profession, his lordship permitted the case to be re-argued by one counsel on each side.

Mr. Stuart supported the judgment of the court below, and

Mr. Bethell appeared for the other side.

The Lord Chancellor now gave judgment, and remarked, that he had originally coincided with the decision of the Vice-Chancellor, but upon consideration had seen reason to change his opinion. After referring to the terms of the bequest, his lordship observed, that the testator obviously intended his daughter to have the income of the property entirely to her own use, without in any manner anticipating it; or disposing of the payments except as they successively became due, and that it could not be supposed he intended to leave any mode of anticipation open after he had so carefully excluded one mode. The only question was,

whether the words were sufficient to effect such intention. The income was to be paid when due, as his daughter should direct, "but not by way of assignment, charge, or other anticipation." Her appointment was to be over the income when due, and extended only to what was due, and was clearly and concisely expressed. Much depended upon the negative words, "but not by way of anticipation." Any effectual assignment would be an anticipation, and this had evidently been considered by the framer of the clause. The true construction, and one which would correspond with the testator's intention was, that the life interest could not be anticipated nor any dominion exercised over it, except as authorised by the power of appointment as and when the income became due. The question was not affected by the receipt clause. The ground of the Vice-Chancellor's judgment appeared to be founded on the case of *Barrymore v. Ellis*, (8 Sim. 1); but in that instance the estate could have been disposed of independently of the power. In the present case the restriction extended to the whole gift. Here the receipt clause corresponded in its material parts with that in *Barton v. Briscoe*, 1 Jacob, 603, which had been fully discussed in the argument and judgment; such discussion would have been unnecessary if the effect of the clause was to be such as the Vice-Chancellor entertained on this case. The demurrer must be allowed, but in consequence of the discrepancy between the present and former opinion, no costs would be given.

Rolls Court.

*Grace v. Baynton*. June 4, 1846.

PAYMENT INTO COURT.—COSTS.

*A purchaser is not excused from paying his money into court, by the delay of other parties not completing the conveyance.*

THIS was a motion for payment into court of the purchase money of an estate sold under decree. The only question was as to the costs. It was argued on behalf of the purchaser, that the delay, which it was admitted had taken place, had arisen solely from the refusal of trustees who declined to act in the trust, to execute the conveyance, lest it should amount to an acceptance of the trust; but the Master of the Rolls held, that the purchaser was in default in not having brought the money into court in due time, and must pay the costs.

Queen's Bench.

(Before the Four Judges.)

*The Queen v. Buchanan*. Easter Term, 1846.

ATTORNEY.—INDICTMENT.—MISDEMEANOR UNDER 6 & 7 VICT. C. 73.

*It is an indictable offence under the 6 & 7 Vict. c. 73, s. 2, to practise as an attorney without being duly qualified.*

*In a matter of public concern where an act of parliament says that a particular act shall*



*not be done, a disobedience to that act is itself an indictable offence.*

*Where in the same clause in an act of parliament there is a general prohibition declared, and some particular penalty is inflicted, then the proceeding for a violation of the prohibition must be according to the specific remedy pointed out; but where the prohibition is in general terms a violation of the prohibition is an indictable offence, although a particular penalty may be given in a subsequent clause in the same statute.*

AN indictment was preferred under the statute 6 & 7 Vict. c. 73, s. 2, against the defendant for practising as an attorney in conducting an appeal at quarter sessions without being duly qualified.\* To this indictment there was a demurrer.

The Solicitor-General, Sir F. Kelly, (with whom was Mr. Horn,) in support of the demurrer.

The statute 6 & 7 Vict. c. 73, is substituted for the 2 Geo. 2, c. 23, and in the latter statute there is a general prohibitory clause against persons practising as attorneys without being

\* It may be useful for other cases to give the form of the indictment. The first count was as follows:—

That after the passing of the 6th and 7th of Victoria, the Act for consolidating and amending several of the Laws relating to attorneys and solicitors practising in England and Wales, George Buchanan, late of the parish of Chatham, &c., not regarding the statute, did at a general quarter sessions of the peace holden in and for the city and borough of Canterbury, on the 1st day of July, in the 8th year of the reign, &c., before William Fuller Boteler, Esq., Recorder of the said city and borough, then, to wit, on the day and in the year of the reign aforesaid, in the city and borough aforesaid, and county of the same, in the said county of Kent, unlawfully act as an attorney in a certain civil cause which then in due form of law came on to be heard at the said sessions, to wit; a cause in which the churchwardens and overseers of the poor of the parish of Chatham, in the county of Kent, were appellants, and the churchwardens and overseers of the poor of the parish of St. Mary, Northgate, in the city and borough of Canterbury, and county of the same, were respondents, and did then and there act as an attorney for the said appellants, and did then and there as such attorney, retain, employ, and instruct counsel to conduct the said appeal, he the said George Buchanan not having been previously to the passing of the said act admitted or enrolled or otherwise duly qualified to act as an attorney or solicitor under or by virtue of the laws in force at the time of the passing of the said act (nor having at any time after the passing of the said act) been admitted or enrolled or otherwise duly qualified to act as an attorney or solicitor pursuant to the directions and regulations of the said act, contrary to the form of the statute.

duly qualified, and yet there is no instance reported of an indictment having been supported against a person for violating the provisions of that act. The 2nd section of the 6 & 7 Vict. c. 73, contains a general prohibition, that no attorney or solicitor shall practise, unless duly qualified; but in subsequent sections of the act penalties are inflicted for noncompliance with the provisions of the act. By section 26, persons practising as attorneys, without having obtained a certificate, are rendered incapable of recovering their fees. By sections 35 and 36, unqualified persons acting as attorneys are not only precluded from recovering their fees, but they are made guilty of a contempt of the court in which they have attempted to practise, and punishable accordingly. Independent of these penal enactments, this court has a general superintending power over attorneys, and in the exercise of its summary jurisdiction can punish those who violate the rule and practice of the profession. Under these circumstances, where the law has afforded such ample protection to the public against persons practising as attorneys, who are not duly qualified as such, the legislature never could have intended to have made this an indictable misdemeanor.

It is laid down in *Castle's case*,\* that where a statute appoints a penalty for the doing of a thing which was no offence before, and appoints how it shall be recovered, it shall be punished by that means, and not by indictment. There is stated to be a difference in the cases where an act is prohibited in one section of a statute, and a penalty given in another, and the case where the prohibition and penalty are given in the same section; in the former case an indictment is said to lie under the general prohibitory clause; in the latter, that the remedy given in the clause must be pursued, and no other. There are expressions to this effect in several cases, but there never has been any express decision on the subject. He cited *Crofton's case*;† *Rex v. Wright*;‡ *Rex v. Harris*;§ *Forster v. Taylor*;|| *Rex v. Dickenson*.¶

The Attorney-General, Sir F. Thesiger, (with whom was Mr. Bodkin,) was not heard.

Lord Denman, C. J. This defendant has been indicted for practising as an attorney in conducting an appeal at the quarter sessions, and it is contended on his behalf, that the matter is not the subject of an indictment, but that being merely prohibited in one clause of the statute 6 & 7 Vict. c. 73, s. 2, the only penalty inflicted by the law is that which is to be found specifically directed against the offence in some other provisions in the same statute. I am of opinion that where in a matter of public concern an act of parliament says that a particular thing shall not be done, a disobedience to that act is itself an indictable offence. I agree that, if in the same clause of a statute in which the prohibition is declared,

\* Cro. Jac. 644. † 1 Modern, 34.

‡ 1 Burrow. 543. § 4 T. R. 202.

|| 5 Bar. & Adol. 887. ¶ 1 Saund. 135.

some particular penalty is inflicted, then the proceeding for a violation of the prohibition contained in the statute must be taken according to that particular clause. If a certain thing is prohibited on pain of certain specified consequences, this must be the case; but where the prohibition is in general terms, a party offending may by virtue of those general terms be indicted for a violation of the prohibition, and though a particular penalty may be afterwards given, that will not interfere with the general principle. On this matter I do not think that we should be justified in drawing inferences as to the construction of this act from the circumstance that there are particular provisions in other acts, and that if they should be construed in the same manner, particular inconveniences might arise. Most certainly we cannot draw the inferences suggested to us from the 2 Geo. 2. The late act of parliament (6 & 7 Vict. c. 73) has a clause, the 35th, which imposes a specific punishment on this offence. In this clause the offence of practising as an attorney without being duly admitted is declared to be a contempt of court, and the party offending is declared incapable of recovering his costs. Obviously both these provisions were entirely unnecessary. There can be no doubt that the party who practises as an attorney without being one, cannot recover his costs, and it was not needed that such a declaration of the law should be made in the statute; and in the same way it is clear beyond all doubt that the act of so practising is a contempt of the court in which that act occurs. The introduction, however, of such a clause into the statute will not, however, protect the party offending from liability to an indictment. The true rule was laid down in the case of *Rees v. Wright*,<sup>1</sup> where Lord Mansfield says, "I always took it that where new created offences are only prohibited by the general prohibitory clause of an act of parliament, an indictment will lie; but where there is a prohibitory particular clause, specifying only particular remedies, then such particular remedy must be pursued." Mr. Justice Denison takes the same distinction; he says, "that where an offence is not so at common law, but made an offence by act of parliament, yet an indictment will lie where there is a substantive prohibitory clause in such act of parliament; though there be afterwards a particular provision and a particular remedy given." *Crofton*'s case is an isolated case, but there a certain act was prohibited on pain of certain consequences. It was not a general prohibition, but only a prohibition in a particular sense, and in that sense alone. The true rule, I repeat, is the one I have mentioned, and which I think we ought to adopt in the present instance.

Mr. Justice Patterson. I am entirely of the same opinion. Though there is no express decision on this point, I think the law is correctly laid down in the note to *The King v. Dickenson*,<sup>2</sup> namely, that where an offence is not so at

common law, but is made an offence by act of parliament, an indictment will lie where there is a substantive prohibitory clause in such act of parliament, though there be afterwards a particular provision and a particular remedy given.

*Williams and Wightman*, J's, concurred.

Judgment for the Crown.

### Queen's Bench Practice Court.

*Kimberley v. Hickman*. Easter Term, 1846.

INTERPLEADER ISSUE.—COSTS OF APPLICATION FOR COSTS OF THE DAY FOR NOT PROCEEDING TO TRIAL.

*If a plaintiff in an interpleader issue makes default in proceeding to trial, and application be made to compel him to pay the costs of the day and to go to trial, the costs of such application are costs in the cause, in like manner as upon applications for judgment as in case of a nonsuit.*

In this case a judge's order had been made directing an issue under the interpleader act, in which one Richard Maddock, the claimant, was to be plaintiff, and the execution creditor the defendant; and the claimant having neglected to proceed to trial at the last assizes, a rule was obtained on a former day in this term, calling upon the said claimant to show cause why the sum paid into court should not be paid to the execution creditor; or why the claimant should not proceed to try the issue at the next assizes; and why he should not pay the costs occasioned by his default at the last assizes, and of this application: notice of this rule to be given to the sheriff.

*Peterdorff*, for the claimant, showed cause, submitting that though the claimant should be ruled to go to trial at the next assizes and to pay the costs of the day, yet that the costs of this application ought to stand on the same footing as the costs of applications for judgment as in case of a nonsuit, in which case nothing respecting such costs is mentioned in the rule, and they are dealt with as costs in the cause.

*Bevill* for the execution creditor, and *Ather-ton* for the sheriff, submitted that the payment of the costs of the application should form part of the rule.

*Wightman*, J. I would rather assimilate the practice in these cases to that which prevails upon applications for judgment as in case of a nonsuit. All costs, therefore, other than the costs of the day, will be reserved for the event of the trial.

Rule accordingly.

### Common Pleas.

*Harris v. Robinson*. Easter Term, 1846.

ENTERING AN APPEARANCE.—2 W. 4, c. 39, s. 11, REGULATES THE TIME.

*The statute 2 W. 4, c. 39, s. 11, takes the time for the service of a writ of summons out of the operation of Reg. Gen. E. T. 2*

<sup>1</sup> 1 Burrow. 543.

<sup>2</sup> 1 Mod. 34.

<sup>3</sup> 1 Saund. 135.

*W. 4, and therefore an appearance may be entered for the defendant on the 16th, where the writ of summons had been served on the 6th of the same month, the intervening 12th being Easter Day.*

*C. Jones, Sergeant, had on a former day in this term obtained a rule to show cause why the appearance entered in the present case and all subsequent proceedings should not be set aside for irregularity, and why the plaintiff should not pay the costs occasioned thereby. The writ of summons had been served on the 6th of April, and on Thursday, the 16th of the same month, an appearance was entered by the plaintiff. Two of the intervening days, namely, the 10th and 12th, were, the one Good Friday, and the other Easter Day, and the irregularity, it was contended, arose under the Reg. Gen. E. T. 2 W. 4, which ordered "that the days between Thursday next before, and the Wednesday next after Easter Day, shall not be reckoned or included in any rules or notices or other proceedings, except notices of trial or notices of inquiry in any of the courts of law at Westminster."*

*Byles, Sergeant, showed cause. The statute 2 W. 4, c. 39, was passed on the 23rd of May, 1832, during the Trinity Term of the same year as the rule of court, and came into operation on the 1st day of the following Michaelmas Term. The 11th section, which was to be found at page 388 of Jervis's New Rules, 4th edition, after enacting that all necessary proceedings to judgment and execution may be had on a writ of summons, &c., after the expiration of eight days from the service, whether in term or vacation, and after providing for cases in which the last of such eight days falls upon a Sunday, Christmas day or any public fast or thanksgiving, goes on further to enact, by way of proviso, "that if the last of such eight days shall happen to fall on any day between the Thursday before and the Wednesday after Easter Day, then in every such case the Wednesday after Easter Day shall be considered the last of such eight days." According to this statute, therefore, the appearance has in the present case been regularly entered, for by it we were entitled to take that step on Thursday, the 16th, the eight days having concluded on the Tuesday immediately preceding.*

*C. Jones, Sergeant, in reply. The rule is not affected by the statute. It has all the effect of an act of parliament, and cannot be repealed but by an express enactment.*

*Tindal, C. J. You cannot make it stronger than an act of parliament, and *leges posteriores priores contrarias abrogant*.*

*C. Jones, Sergeant. The case of Harrison v. Tait and others, decided on the 7th of May, 1838, and reported in 4 Bing. N. C. 447, is an authority for the defendant.*

*Erle, J. The statute here only applies to the days for service of a writ, and that case refers to the delivery of a demurrer.*

*By the Court. The rule must be discharged with costs.*

Rule discharged with costs.

*Stephenson v. Finney. Easter Term, 1846.*

EXCESSIVE COSTS.—AN ORDER FOR TAXATION THE PROPER MODE OF PROCEEDING.

*Where it appears that the defendant has properly paid a less sum for costs than that endorsed on the writ of summons, and in consequence of the plaintiff's having subsequently proceeded in the action, has incurred some additional costs, the court will not, upon motion, direct the payment of the latter. The proper course is for the defendant, upon payment of the whole sum endorsed, to obtain an order for taxation at the time.*

*Byles, Sergeant, moved for a rule to show cause why the plaintiff's attorney should not pay to the defendant or his attorney the costs in the case incurred subsequent to the 6th of February last. The writ of summons had been served on the 30th of January, endorsed for 16 guineas debt, and 2l. costs. On the 5th of February the defendant called at the office of the attorney who had issued the writ, but finding that the latter was absent, he called the next day and paid the sum of 18l. 10s., being the full amount of the debt, but only 1l. 14s. for costs. Dissatisfied with this, the plaintiff's attorney, on the 11th of March, filed the proper affidavit of service, and in the usual manner delivered a declaration and particulars of demand. A summons was then taken out before Mr. Justice Maule, to set aside the declaration, which, upon the hearing, was dismissed, on the ground that the application had been made too late. The defendant next obtained another summons calling upon the plaintiff to show cause why it should not be referred to the Master to say whether the plaintiff had not received all that he was entitled to, and upon that an order was granted accordingly. The Master reported that the sum paid on the 6th of February exceeded what was then due by 1s. 6d., whereupon an application was made to the plaintiff's attorney to refund the amount which the defendant had over paid, and to pay the costs incurred by the defendant subsequently to the 6th of February. The former demand had been complied with, but the latter sum the plaintiff's attorney refused to pay, and in order to compel him so to do the present application was made.*

*By the Court. The proper course was for the defendant to have paid the amount endorsed on the writ for costs, and afterwards procured a taxation of those costs in the ordinary way. Having failed to do that, the present rule must be discharged.*

Rule discharged.

Exchequer.

*Sloman v. Williams. Trinity Term, 30th May, 1846.*

CHARGING DEFENDANT IN EXECUTION.—INTERIM ORDER.

*A defendant came up to be charged in execution, and the gaoler returned that the evening before the defendant had been discharged*

out of custody by virtue of an interim order under the 5 & 6 Vict. c. 116. Held, that he could not be charged in execution.

*Wilson* moved to charge a defendant in execution. He attended with the gaoler, who returned that the evening before the defendant had been discharged out of custody by virtue of an interim order made by Mr. Commissioner Fane, under the 5 & 6 Vict. c. 116.

*Alderson, B.* The return of the gaoler amounts to this, that the defendant has been discharged out of custody, and if so, how can he now be charged in execution?

*Rolfe, B.* The defendant is not in custody, so that the plaintiff is not precluded from arresting him upon a *capias ad satisfaciendum*, but such a proceeding would be fruitless; for when the defendant was taken on the writ he would be discharged again, for he is entitled to protection from process under the interim order.

*Pollock and Platt, B.'s*, concurred.

### Court of Bankruptcy.

*In re Macdonald.* 21st May, 1846.

#### INSOLVENT PETITIONER.

An insolvent petitioning under 7 & 8 Vict. c. 96, should insert in his petition all the names by which he has been known, or the petition will be dismissed.

*Samble, J.* That an insolvent whose petition is dismissed, is a suitor of the court, and as such privileged from arrest on civil process, returning to his home.

A petition for protection from process was filed under the statute 7 & 8 Vict. c. 96, in which the petitioner described himself by the name of "John Macdonald." Upon coming up before Mr. Commissioner *Holroyd* for his interim order, the insolvent was opposed by Mr. *Steele*, as attorney on behalf of a creditor, and stated, on examination, that he was born at Cadix, and baptized in the language of the country *Juan*. The petitioner also admitted, that in some proceedings in the Court of Chancery he had described himself as, "*Juan*, otherwise *John Macdonald*." Upon these facts it was submitted, that the petitioner had not sufficiently described himself in his petition, and that it must be dismissed.

Mr. *Buchanan*, for the insolvent, contended, that there was no misdescription, as *Juan* and *John* were in fact the same name in different languages, and the petitioner when in England used the English name of *John*. At all events the petition might be amended.

Mr. Commissioner *Holroyd* thought the objection fatal. If the petitioner could have sworn that he had never been known by any other name than that of *John*, it might be different, but it appeared from his own statement that he was described in proceedings in the Court of Chancery as "*Juan*, otherwise *John Macdonald*." The petition must therefore be dismissed, but the insolvent might file another petition.

In a few minutes after the learned commissioner had pronounced his judgment, one of the officers of the sheriffs of London applied to the commissioner for his advice and interposition under the following circumstances:—Mr. *Steele*, the attorney for the opposing creditor, placed a warrant against the petitioner *Macdonald*, founded on a writ of *ca. sa.*, in the officer's hand, directing him to do his duty and arrest *Macdonald*. The insolvent's attorney insisted that the petitioner was privileged from arrest on his return to his home from the court. The officer expressed his readiness to do whatever the commissioner thought right.

Mr. Commissioner *Holroyd* considered that the insolvent was a suitor of the court, although it happened he was an unsuccessful suitor. As a suitor he was privileged in returning to his place of abode from the court, but if he loitered on his way unnecessarily, or went in a different direction from his home, his privilege from arrest would cease.

The officer thanked the learned commissioner for the expression of his opinion, and declined under these circumstances to execute the warrant.

### BUSINESS OF THE COURTS.

#### Queen's Bench.

Trinity Term, 1846.

This Court will, on Saturday the 13th, Monday 15th, Saturday the 20th, and Monday, the 22nd days of June instant, and the five following days, hold Sittings, and will proceed in disposing of the business in

The *Special Paper*;  
The *New Trial Paper*,  
And in giving judgment in cases then pending.

#### Exchequer.

This court will, on Thursday the 18th day of June instant, hold Sittings, and will proceed in disposing of the business then pending in the *New Trial Paper* and *Special Paper* on the said 18th day of June, and on the two following days, and on Monday the 22nd day of June, and the five following days; and on Monday the 29th day of June, and the five following days.

### COMMON LAW SITTINGS.

#### Exchequer of Pleas.

After Trinity Term, 1846.

#### MIDDLESEX.

Saturday . . . 13	} Common Juries.
Monday . . . 15	
Tuesday . . . 16	} Excise & Com. Juries.
Wednesday . . . 17	
Thursday . . . 18	
Friday . . . 19	
Saturday . . . 20	Customs & Com. Juries.
Monday . . . 22	Common Juries.

Tuesday . . .	23	} Special Juries.
Wednesday . . .	24	
Thursday . . .	25	
Friday . . .	26	
Saturday . . .	27	

## LONDON.

Monday . . .	June 15	To Adjourn only.
Monday . . .	29	Adj. Day, Com. Juries.
Tuesday . . .	30	} Common Juries.
Wednesday . . .	July 1	
Thursday . . .	2	
Friday . . .	3	
Saturday . . .	4	
Monday . . .	6	} Special Juries.
Tuesday . . .	7	
Wednesday . . .	8	
Thursday . . .	9	
Friday . . .	10	

The Court will Sit at 10 o'clock.

## NOTES OF THE WEEK.

## THE BENCHERS OF THE INNER TEMPLE.

MR. HAYWARD, whose rejection by the Benchers of the Inner Temple, upon his becoming a candidate for the office after being appointed one of her Majesty's counsel, excited so much observation in the profession, has appealed to the judges in their character of visitors of the inn. Their lordships have held one meeting at Serjeant's Inn for the consideration of the appeal, at which Sir Thomas Wilde was heard as counsel on behalf of Mr. Hayward. The benchers did not appear by counsel, but by a deputation from amongst their own body, at the head of which was Sir Charles Wetherell. The argument was adjourned, and is to be resumed when the judges think proper to appoint another meeting for the purpose.

## PRINCE ALBERT.

His Royal Highness honored his brethren the benchers of Lincoln's Inn with his presence at dinner in the New Hall, on Wednesday, the 10th instant, being the first "grand day" since his election as a member of that learned body. The prince wore the bencher's silk gown. Mr. Tancred, Q. C., the Treasurer, presided. Lords Brougham, Denman, and the great majority of the benchers, and nearly 300 members were present.

## PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

## House of Lords.

## NEW BILLS.

Real Property Conveyance.—For 3rd reading. See the bill pp. 50, 70, *ante*. Lord Brougham.

General Registration of Deeds. — Lord Campbell. Deferred until the Corn Bill has passed.

Religious Opinions Relief.—Re-committed. Lord Chancellor.

Punishment for deterring Prosecutors, Witnesses, &c.—In Committee. See the bill, 31 L. O. 472. Lord Denman.

Metropolitan Buildings.—For 2nd reading. See the bill, 31 L. O. 426.

Railway Companies Dissolution.—For 3rd reading. Lord Dalhousie.

Railway Deposits.—In Committee.

Insolvent Debtors' Act Amendment.—For 3rd reading. Lord Brougham.

Commons Inclosure. For 2nd reading.

Veracious Actions Protection. — For 2nd reading.

Game Laws.—To be reported.

Small Debt Courts:

St. Austell. In Committee.

Birkenhead. For 2nd reading.

Friendly Societies.—Passed.

## House of Commons.

## NEW BILLS.

Administration of Criminal Justice. — For 3rd reading.

Bankruptcy and Insolvency.—For 2nd reading. 24th June. See the bill, 31 L. O. 569. Mr. Hawes.

Roman Catholics' Relief. — Re-committed. See the bill, p. 402, *ante*. Mr. Watson.

Small Debts Court:

Somerset. 2nd reading, 26th June.

Northampton.

Poor Removal. — Re-committed. Sir J. Graham. See analysis of the bill, 31 L. O. 473.

Highway Laws Amendment.—For 2nd reading. Sir James Graham.

Corresponding Societies, Lectures, &c. Mr. T. S. Duncombe.

Metropolis Interments. Mr. Mackinnon.

Death by Accidents Compensation. For 2nd reading.

Deodands Abolition. Mr. Bouverie.

Total Abolition of the Punishment of Death. Mr. Ewart.

County Rates. For 2nd reading.

## THE EDITOR'S LETTER BOX.

THE cases referred to in the *Analytical Digest* comprise not only those cited in the concluding judgment of the court, but such as are noticed by the judges in the course of the argument. Occasionally, also, we refer to a case in point; and by these several means, we trust, we have brought the Digest into a very useful and convenient form. Another section of the Common Law part appears this week. The Cases on *Pleadings* will follow next, and be succeeded by *Practice*.

We are particularly obliged to "A Subscriber, in *status pupillari*," for the trouble he has taken, and will attend to his hint.

We are continuing our reviews of new books as speedily as convenient. Amongst the most recent publications is Mr. Spence's very valuable work on the Equitable Jurisdiction of the Court of Chancery. We shall pay our respects to this and others without delay.

# The Legal Observer.

SATURDAY, JUNE 20, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## LAW OF RAILWAYS.

### PLEADING IN ACTIONS FOR CALLS AFTER TRANSFER OF SHARES.

NOTWITHSTANDING the extensive litigation arising out of railway transactions, the law, with regard to undertakings of this nature, in all its ramifications, is still in an extremely unsettled and unsatisfactory state, and the general incertitude which prevails as to the rights and liabilities of parties must be expected to continue, at all events to a considerable extent, until the principles applicable to this important class of cases have been deliberately discussed and reviewed by a court of error.

The number of Messrs. Manning & Granger's Reports, which has just been published, furnishes an instance in which a decision of the Court of Common Pleas, in a question of pleading connected with railway law, has been reversed by the Court of Exchequer Chamber.\*

The plaintiffs in this action were the Aylesbury Railway Company, which under an act of parliament, (6 & 7 W. 4, c. 37, s. 95,) was empowered to sue subscribers for calls, and in pursuance of this power, sued the defendant, (Mount,) who had been the proprietor of 50 shares in the undertaking, for 250*l.*, being a call of 5*l.* upon each share. Mount, by his plea, admitted that he had been the proprietor of the shares in the declaration mentioned, and that a call was made pursuant to the provisions of the act of parliament for an instalment of 5*l.* per share, to be paid by the proprietors on or before the 9th day of April then next, but that after the call was

made, and before the sum was due or payable, on the 7th April, the defendant sold, and by deed under seal assigned and transferred his shares to one Thompson, and that the conveyance by the defendant to Thompson being first duly executed, was delivered to, and received by the company, and a memorial thereof duly entered in the company's book, whereby the defendant before the said call became payable ceased to be the proprietor of the shares, or liable to the call under the provisions of the act; concluding with a verification, &c. To this plea there was a special demurrer, and upon the argument in the Court of Common Pleas it was suggested that even if the plea should be held bad, as amounting to the plea of never indebted, the declaration was bad in not pursuing the form given by the Railway Act, and the defendant would therefore, be entitled to judgment.

The 6 & 7 W. 4, c. 37, s. 98, enacts —

“That in any action to be brought by the company against any proprietor for the time being of any share, to recover any money due in respect of any call, it shall be sufficient for the company to declare and allege, that the defendant, being a proprietor of a share in the undertaking, is indebted to the company in such sum of money as the calls in arrear amount to, for a call, or so many calls, of such sums of money, upon a share belonging to the defendant, whereby an action hath accrued to the company by virtue of this act, without setting forth the special matter; and on the trial it shall only be necessary to prove that the defendant at the time of making such respective calls was a proprietor of a share in the undertaking.”

The declaration founded upon this enactment stated, that the defendant, before the commencement of the suit, to wit, on the 6th March, and being the proprietor of 50

\* *The Aylesbury Railway Company v. Mount*,  
7 M. & G. 898.

shares in the undertaking, was indebted to the company in 250*l.* for a call of 5*l.* upon each share, thereby and by reason of the said sum of 250*l.* being and remaining wholly unpaid, the defendant still is indebted to the plaintiffs in the same, and an action hath accrued, &c.

The objection to the declaration was, that instead of alleging in the language of the 98th section, that the defendant being a proprietor, is indebted, it only alleged in the past tense that he was indebted, and that no liability was incurred by reason of the defendant having been a proprietor of shares after he had ceased to be so. The Court of Common Pleas considered this objection well founded, and that the declaration not alleging that the defendant, "being a proprietor, is indebted," &c., disclosed no cause of action. But this court also determined, that even if the declaration disclosed a good cause of action, it was sufficiently answered by the plea which was good in substance and in form, because it admitted all the matters of fact stated in the declaration, and showed that the defendant had transferred his shares and entered a memorial of the transfer before the call was payable, and was therefore not liable. And that the plea properly concluded with a verification, as it confessed and avoided the matters in the declaration.

The plaintiffs being dissatisfied with this decision, brought a writ of error, which was argued before four of the barons of the Exchequer and three of the judges of the Queen's Bench. The topics urged in the court below were again pressed upon the court of error, and the case of the *Edinburgh, Leith, and Newhaven Railway Company v. Hibblewhite*,<sup>b</sup> was cited on the part of the plaintiff as in point to show that the plea was bad for concluding with a verification. In the case cited, to a declaration in the general form given by the Railway Act, (6 & 7 W. 4, c. 121, s. 50,) the defendant pleaded pleas denying notice of the calls pursuant to the act, and concluding with a verification, and the court held, that the allegation of notice being a fact necessary to be proved in order to entitle the plaintiff to recover, must be taken to be impliedly contained in the declaration, by reference to the act of parliament, and therefore, that the pleas, being in denial of a matter necessarily implied in the declaration, ought to have concluded

to the country, and not with a verification, and were on that ground bad on special demurrer.<sup>c</sup>

In the case of the *Aylesbury Railway Company v. Mount*, the court of error differed with the Court of Common Pleas, as well with regard to the alleged insufficiency of the declaration as to the goodness of the plea. The declaration stating that the defendant was a proprietor, and that he is indebted, was held to be clearly sufficient after plea; and as to the plea, it was said to be a mere argumentative denial that the defendant ever was indebted to the company, and upon that ground bad upon special demurrer. For these reasons, the judgment of the Court of Common Pleas was reversed, and the judgment ultimately entered for the defendant.

That numerous class of persons who consider their interests detrimentally affected by the late decisions of the Court of Exchequer, in *Young v. Smith*,<sup>d</sup> *Lamert v. Heath*,<sup>e</sup> *Walsby v. Spettiswoode*,<sup>f</sup> and others, may take courage from the instance of reversal we have noticed, and find some consolation in the reflection that the decision of one of the courts of Westminster, however ably constituted, is not conclusive, and that the many novel points arising out of railway projects may be deserving of more mature consideration than they have yet received.

<sup>a</sup> A point of more importance in railway law was also decided in *The Edinburgh and Leith Railway Company v. Hibblewhite*, than that in respect to which the case was cited as above stated. By the 6 & 7 W. 4, c. 121, s. 49, the directors were empowered, in case of nonpayment of calls, to sue for them in an action of debt, or that the proprietors should forfeit their shares for the benefit of the company; and the defendant Hibblewhite pleaded, that the directors had in his case exercised their option, and declared the shares forfeited, and that he acquiesced in the forfeiture; and in disposing of this plea upon the ground that it did not show that the shares were declared to be forfeited at a general or special meeting of the company, pursuant to the provisions of the act, Lord Abinger, C.B., expressly declared, that it was clear the directors had no right both to declare the shares forfeited, and also to sue for the calls: the law only allowed them an alternative.

<sup>a</sup> Leg. Obs. v. 31, p. 295.

<sup>c</sup> Leg. Obs. v. 32, p. 198.

<sup>f</sup> Port, p. 180.

# DOCTRINE OF PART PERFORMANCE OF THE CONTRACT OF SALE.

HAVING regard to the article on this subject which appeared in our number of the 6th June, we are now to consider what shall be deemed a sufficient part performance to withdraw the case from the operation of the Statute of Frauds.

Now in the first place, payment of the price, partial or total, will not be so; for there may be a *restitutio in integrum*, that is to say, the money may be paid back and both parties restored to their former situation. Upon this point the remarks of Lord Redesdale<sup>a</sup> have been held conclusive. "It has always," said that great judge, "been considered that the payment of money is not to be deemed part performance to take a case out of the statute. *Seagood v. Meale*, Prac. Chan. 560, is the leading case on that subject. There a guinea was paid by way of earnest, and it was agreed clearly that that was of no consequence in case of an agreement touching lands. Now if payment of 50 guineas would take a case out of the statute, payment of one guinea would do so equally; for it is paid in both cases as part payment, and no distinction can be drawn. But the great reason, as I think, why part payment does not take such agreement out of the statute, is that the statute has said, (section 17,) that in another case, namely, with respect to goods, it shall operate as part performance. And the courts have therefore considered this as excluding agreements for lands, because it is to be inferred that when the legislature said it should bind in the case of goods, and were silent as to the case of lands, they meant that it should not bind in the case of lands. Payment of money is not part performance, for it may be repaid, and the parties will be put as they were before, especially if repaid with interest."

Still clearer is it that payment of the auction duty will not take the case out of the statute.<sup>b</sup>

Neither will acts merely ancillary and introductory, as delivering abstracts, preparing conveyances, going to view the estate, and making surveys, valuations, &c., although each of these acts are necessarily attended with expense.

The fact of possession in pursuance of a parol agreement may be viewed, first, with reference to the *vendor*, and secondly, with reference to the *vendee*.

As to the vendor, if he deliver possession to the vendee, this is a part performance by the vendor which will bind the vendee.

So as to the vendee, if he take possession in pursuance of the contract, this is a part performance by the vendee which will bind the vendor; but if the vendee enter into possession wrongfully, it will not avail him, for the vendor will not be bound.

Where the vendee has not only been put in possession in pursuance of the contract, but has expended money in building, repairs, or other improvements, it would be inequitable to permit the vendor to plead the statute against him; for in such a situation if the parol contract were to be considered a nullity, the vendee would be liable to be treated as a trespasser, and his expenditure would not only operate to his prejudice, but would be the direct consequence of a fraud practised upon him by the vendor.

In the case of a tenant, the mere fact of his continuance in possession will have no weight, for, as observed by Lord Loughborough, "The delivery of possession by a person having possession to the person claiming under the agreement is a strong and marked circumstance, but the mere holding over by the tenant, (which he will do of course if he have no notice to quit,) would not of itself take the case out of the statute, or even call for an answer. But if he pay additional rent, the landlord must answer whether he accepted such additional rent on the foot of a new agreement or on any other ground."<sup>d</sup>

The act, says, Lord Eldon, to be considered a part performance must be in its nature almost necessarily done in pursuance of the contract. Thus where repairs are stated, the court must be satisfied that they would not have been done if that contract had not been made.<sup>e</sup>

To the same effect, but with greater amplitude of illustration, Sir William Grant, (in a case where it was contended that there was part performance by a tenant rebuilding on the faith of the landlord's verbal promise to renew his lease,) held that to show a part performance it was necessary that the act should be one unequivocally referring to, and resulting from,

<sup>a</sup> *Clinan v. Cooke*, 1 Sch. & Lef. 40.

<sup>b</sup> *Duckmaster v. Harrop*, 7 Ves. 341, and 13 Ves. 456.

<sup>c</sup> 3 Ves. 39, note.

<sup>d</sup> *Wills v. Stradling*, 3 Ves. 381.

<sup>e</sup> *Ex parte Hooper*, 19 Ves. 479.



the agreement, and such that the party would suffer an injury amounting to fraud by the refusal to execute it. But this was not the nature of the act here. For first, it was equivocal; secondly, it was such as easily admitted of compensation without executing the agreement. It was not an unequivocal act, for it would have taken place equally if there had been no agreement. The principle of the cases is, that the act must be of such a nature that if stated it would of itself infer the existence of some agreement, and then parol evidence is admitted to show what the agreement is. But this act would not infer the existence of an agreement, as it must have been done by the party either at his own or the landlord's expense. Then was there such an injury as could not easily be repaired in any other way than by executing the agreement? No; for the money which he has expended he might recover from the landlord, if it was by the landlord that the expense was to be borne. The circumstance that the party may be obliged to resort to an action to get back his money was no reason for taking the case out of the statute. Lord Redesdale, in a case before him, stated his opinion that payment of money was not a part performance. Yet there the act could hardly be said to be equivocal in its nature, as the payment of a price presupposes a sale; but the money may be repaid, and the parties are restored to their former situation. This case was stronger, for the expenditure did not imply a precedent agreement. Suppose my tenant should set up an agreement for a purchase and get a witness to swear to it, and then offer as evidence of part performance his possession and cultivation of the land. Could that be deemed an act of part performance which would have existed precisely in the same shape, whether there was any agreement for a purchase or not?

According to this doctrine the act must not only be unequivocally referable to the alleged verbal agreement, but it must be such an act as does not easily admit of pecuniary compensation. This shows how erroneous are some of the older cases in which it was held that payment of the price partial or total amounted to a sufficient part performance, because although such payment be referable to the agreement, yet a *restitutio in integrum*, by repayment back with interest, is ample compensation.

## NEW BILLS IN PARLIAMENT.

### INSOLVENT DEBTORS.

LORD BROUGHAM's Bill as amended on report, provides,—

1. That the court may direct the real or personal property belonging to the insolvent to be sold, but if it cannot be sold the court may, after        years, direct the same to be given up to the insolvent.
2. Where the assignee shall have omitted for ten years to sell or get in the prisoner's estate, such estates shall revert to the prisoner, discharged from liability in respect of his former debts.
3. Apportionment of future acquired property if of substantial value.

### REAL PROPERTY CONVEYANCE.

This bill has been "amended" after the report of the committee, and enlarged from 47 folio pages to 100. The body of the bill remains in the same state as we gave it on the 16th May, (see p. 50, *ante*). The schedule, part of which will be found at p. 70, has been extended by the following additions:—

Conveyances of Realty, s. 1 to 16.

Conveyances of Personalty, s. 17 to 20.

Then come the forms, given in the former Bill, of Settlement and Wills, s. 21 to 155.

Mortgages of Realty, s. 156 to 197.

Mortgage of Reversionary Interest of Stock.

Mortgage of Policy of Assurance, s. 198 to 200.

Mortgage by way of further Charge, s. 201.

Transfer of Mortgage, s. 202, 203.

Reconveyance of Mortgage Property, s. 204 to 206.

Covenants for Title of Realty, s. 207 to 219.

Covenants for title of Personalty, s. 220 to 230.

Covenant against Incumbrances by a Mortgagee or Trustees, s. 231.

Covenant to produce Title Deeds, s. 232.

Releases, s. 233 to 235.

Leases of Farms, s. 236 to 269.

The Law Review advises Lord Brougham, whilst he bestows attention on any suggested improvements in the bill, to reject any application for time to consider the subject. Now this enlarged bill, (more than double the extent of the former,) has only just been reprinted with the additions. Are we unreasonable, in this busy season, to request a little breathing time on the part of the profession?

## NOTES ON EQUITY.

TRUSTEES NEGLECTING TO INVEST—WHETHER ANSWERABLE IN THE WAY MOST BENEFICIAL TO THE CESTUIS QUE TRUST.

In the case of *Marsh v. Hunter*,<sup>1</sup> Sir

<sup>1</sup> 6 Mad. & Gel. 295.

*John Leach*, V. C., urged that if trustees are left at liberty to invest the trust-moneys in the public stocks, or on real security, and they do neither, whereby loss ensues they shall be answerable to the *cestui que trust*, not for the amount of stock which might have been purchased, but for the principal money;—for suppose real security had been taken, (which would have been within the scope of their authority,) the principal money only would have been forthcoming to the trust.

Such was the decision of Sir *John Leach* in the year 1822.

Four years afterwards, in 1826, an opposite conclusion was arrived at by Lord *Gifford*, M. R., in *Hockley v. Bantock*,<sup>b</sup> where, executors having had an option to invest money in the public funds, or on mortgage, abstained from doing either the one or the other; and the question arose whether the court was not bound to compel them to place the *cestui que trust* in the same situation as if stock had been purchased. The court, though with some apparent hesitation, decided in the affirmative; upon the principle that where a breach of trust has been committed, the trustee shall be answerable, not in the way which shall be most convenient for him, the trustee, but in the way which shall be most beneficial to the party injured, namely, the *cestui que trust*. Thus, where a trustee employs trust-moneys in business, he may be made to account not merely for interest at five per. cent, but for the actual profits of the trade. The reasonings on which Lord *Gifford* proceeded appears to have been followed and adopted by his successor, the present Master of the Rolls. For in *Watts v. Girdlestone*,<sup>c</sup> Lord *Langdale* held that where trustees had been directed to invest money on government or real security, and did neither, they should be answerable, at the option of the *cestuis que trust*, either for the money or the stock which might have been purchased therewith; his lordship observing that trustees were bound to make satisfaction under such circumstances "in the manner most beneficial to the *cestuis que trust*." And accordingly he decided that they should make good to the plaintiffs "so much bank three per cent. annuities" as the sums in question would have purchased on a particular day; such, of course, being the choice of the *cestuis que trust*.

Here, then, we have Lord *Gifford* and Lord *Langdale* in direct opposition to Sir *John Leach* upon a question of great practical importance. With respect to Lord *Langdale*, it is to be remarked that he not only, in *Watts v. Girdlestone*, said that the point was of consequence, but before deciding it, he took time for consideration. Nay more, in a late case, *Ames v. Parkinson*,<sup>d</sup> he alluded to *Watts v. Girdlestone*, and said he retained the opinion expressed in that case, and thought it had been rightly decided."

In this contest of judicial authority, we are inclined to think that the question will ultimately be determined by reference to the circumstance that the court, in dealing with matters of this description, has two objects in view—one a public object, the repression of laxity on the part of trustees—the other a private object, the awarding of compensation where individual injury has been sustained. Thus, when equity requires a trustee to disgorge the profits of a trade or business in which he has improperly invested trust-moneys, it evidently goes beyond the mere satisfying of the *cestui que trust*. It exercises a jurisdiction in *pœnam*. And it does so wisely; for if a trustee with his eyes open commits a gross breach of trust, whereby the trust funds are lost or put in jeopardy, it seems scarcely sufficient to answer the purposes of justice simply to decree that he shall make good the amount. It is fit that he should for his folly, to use no stronger term, undergo something in the nature of a penalty. And this we apprehend to have been the view upon which Lord *Gifford* and Lord *Langdale* proceeded in the two cases to which we have adverted,

Nevertheless, we are bound to state that Sir *James Wigram*, V. C., in *Shepherd v. Moul*, which is just reported by Mr. *Hare*,<sup>e</sup> has, after a careful review of the authorities, adopted the opinion of Sir *John Leach*. The case turned upon the most usual of all directions to trustees to make investments "in government or real securities." This direction was neglected. The Vice-Chancellor decided that the trustees were chargeable with the whole amount of the trust funds and interest, but held that they were not answerable for the amount of consols or any particular security in which they might in terms of the will have invested the trust moneys. It is due to his honour to

<sup>b</sup> 1 Rns. 141.<sup>c</sup> 6 Beav. 189.<sup>d</sup> 7 Beav. 365.<sup>e</sup> 4 Hare, 500.

give his reasoning in his own words. He remarked that—

“Where trustees are bound by the terms of their trust to invest money in the public funds, and instead of doing so, retain the money in their hands, the *cestuis que trust* may elect to charge them either with the amount of the money, or with the amount of the stock which they might have purchased with the money. If the trustees are not bound to invest the money in the funds, or in any specific security, but by the terms of the trust have a discretion to invest it in various ways, and instead of doing so they retain it in their hands, and the *cestuis que trust* insist on charging the trustee with the value of some particular security that might have been obtained, there is much more difficulty in dealing with the claim. The discretion given to the trustees to select an investment among several securities, makes it impossible to ascertain the amount of the loss (if any) which has arisen to the trust fund from the omission to invest, except, perhaps, in the possible case of a particular security having been offered to the trustees in conformity with the terms of the trust. Suppose the trustees were directed to invest moneys either in the funds or in the purchase of lands, there would, at a subsequent time, be no better reason for saying that the trustees ought to have made the investment in the funds, than that they ought to have purchased land. Unless some reason can be shown why the trustees should at any given moment have chosen one kind of investment rather than another, it seems impossible to say there has been a default by the trustees in not having made a particular investment. In this case, I see no greater reason for saying that the trustees were bound to invest the trust moneys on government security unless a real security had presented itself, than for saying that they were bound to invest the same moneys in real estate unless a security in stock had been offered at a given price. The breach of trust is in having made no proper investment,—not in having omitted to choose the one rather than the other. That was the opinion of Sir John Leach in the case of *Marsh v. Hunter*. Lord Gifford, in the case of *Hockley v. Bantock*, decided otherwise. In the latter of these cases, however, the former was not cited; and, judging from the hesitation with which the court made the order, it appears probable, that had *Marsh v. Hunter* been cited, the decision would have been different. In *Walls v. Girdlestone*, the same question came before Lord Langdale, whose decision was in accordance with that in *Hockley v. Bantock*. My own strong impression, for the reasons which I have stated, is in favour of the view taken in *Marsh v. Hunter*. I cannot see upon what principle the court is to charge the trustees with an accidental improvement in value of one of the several securities, where they are not bound, in the execution of the trust, to select that particular security rather than another. It is much to be regretted that

there should be any difference of opinion in the decisions upon a point of this nature; but I am unable to arrive at a conclusion which would have the effect of charging this trustee with the specific loss resulting from an act not having been done, which particular act the trustees were not in the execution of their trust, imperatively bound to do.”

His Honour, therefore, in these circumstances of embarrassment, made his election to follow the precedent established by Sir John Leach in *Marsh v. Hunter*; and to disregard the subsequent, and as it appears to us, more deliberately considered, and more soundly bottomed decisions of Lord Gifford and Lord Langdale.

## THE LAW STUDENT.

### No. 3.

#### QUESTIONS AT THE EXAMINATION.

Trinity Term, 1846.

#### EQUITY, AND PRACTICE OF THE COURTS.

What is the jurisdiction of Courts of Equity, as distinguished from Ecclesiastical Courts with respect to wills?

Will a Court of Equity interfere in all or what cases of breach of covenant?

In what manner should proceedings be taken on the part of married women and infants respectively?

If a trustee invest part of the trust property on a security not within his authority, and make a profit; and in other like investments sustain a loss, how is the account to be taken?

State some of the instances in which a Court of Equity will grant an injunction.

In what cases may a bill of discovery be filed? and what is the rule in such cases with respect to costs?

What are the necessary proceedings to bring a defendant before the court?

State the several modes of defence which may be resorted to on behalf of a defendant.

What steps can be taken to compel a plaintiff to proceed to a hearing?

Has there been any, and what recent change in the form of affidavits in Chancery?

How is the time for putting in an answer enlarged?

If a defendant do not appear in due time, what proceedings can the plaintiff take?

Can parties be served with process out of the jurisdiction of the court, and how?

State the general course of proceeding in the master's office, in a suit against executors or administrators, by a legatee or creditor.

Is there any, and what recent alteration, made with regard to the allowance of costs between party and party?

#### BANKRUPTCY, AND PRACTICE OF THE COURTS.

State the several proceedings necessary to be taken in obtaining and supporting a fiat?

Are there any, and what debts which are not deemed sufficient to support a fiat?

Are there any, and what persons not liable to the bankrupt laws?

Against what proceedings, and to whom can an appeal be made in bankruptcy?

A bill of exchange drawn or accepted by the bankrupt, becoming due after the fiat is issued, what course must the holder of the bill adopt?

Is there any, and what jurisdiction in bankruptcy over a joint-stock company neglecting to pay its debts?

By what means, since the abolition of arrest on mesne process, can a compulsory act of bankruptcy be established against a trader?

From what liabilities is a bankrupt discharged by his certificate?

On what grounds can a bankrupt's certificate be opposed, and before whom, and how?

Is there any, and what, protection to purchasers of property from the bankrupt, after a secret act of bankruptcy?

Have the commissioners in bankruptcy any, and what, jurisdiction, under a recent statute, over persons not in trade; and what relief can be afforded to such persons?

How does the property of the bankrupt vest in his assignees; and are there any, and what, exceptions to the general rule?

Must any, and what, proceedings be taken by assignees before commencing an action at law, or a suit in Chancery, or before referring a matter in dispute to arbitration?

How are proceedings in bankruptcy rendered admissible in evidence in an action or suit, and when is such evidence conclusive?

What is the course of proceeding by a creditor who holds a mortgage?

#### CRIMINAL LAW, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

What is a common nuisance, and how are persons committing it prosecuted?

Is a private as well as a public nuisance indictable?

How is a nuisance remedied, and is the remedy the same as to all nuisances?

What summary remedy is there against trespassers in search of game?

Who may kill game?

For what offence will a criminal information be allowed?

State the mode of application for a criminal information, and within what period it should be made?

In what case is the confession of a prisoner rejected as evidence against him?

Is the declaration of a person dying or believing himself dying, in any, and what cases, receivable in evidence?

In an indictment for perjury in an answer in Chancery, what evidence should be given?

On an indictment for perjury committed in an answer in Chancery, with what particular object is the handwriting of the defendant to it proved?

Is a person who has been convicted of per-

jury, and received the Queen's pardon, a competent witness?

Can a husband and wife be witnesses for or against each other in criminal courts, and are there any or what exceptions to the rule?

Can the first wife of a man be a witness on his indictment for bigamy?

Is a witness entitled (on criminal proceedings) to be paid for his loss of time as well as his expenses?

#### ANECDOTES OF LAWYERS.

THE *Law Review* of May contains several articles of biography. Besides an ample review of Lord Campbell's *Lives of the Chancellors*, we have recollections of a deceased Welsh Judge; and *Memoirs of the distinguished French advocate, M. Philip Dupin*; and of the *Ex-Chancellor M. Molé*. The articles on the Bar, the Benchers and the Judges, and on Bavarian Criminal Procedure and Remarkable Trials, are also of a popular character. The other articles are on the Law of Estates; Codification; Practical Use of the Roman Law; Cases for the Proof of which more witnesses than one are required; Law of Debtor and Creditor; Burdens on Land and Conveyancing Reform; with Selections of Adjudged Points.

We shall avail ourselves of the Welsh Judge's Recollections:—

"Another circumstance connected with the administration of justice in Wales was the influence of particular counsel—not over judges, for that is common enough in England—but over juries. Few persons ever obtained this influence, who were not Welshmen, and few Welshmen ever obtained the influence of John Jones of Ystrad,\* for many years member for Carmarthen. He was a man of great natural ability, although not of very cultivated talents. He had considerable property, but chose to practise as a barrister on the circuit, and thus kept up and extended his fame. He knew most of the jurymen by sight and name, and they all knew him; he could talk Welsh, and he did not hesitate occasionally to throw in a Welsh sentence or two in the course of his address. His power of obtaining verdicts was almost unexampled; and on one occasion, it is a fact beyond dispute, that a jury, instead of finding for the party, plaintiff or defendant, as the case might be, for whom Mr. Jones was counsel, brought in a verdict 'for John Jones.'

"Speaking of a great power of obtaining verdicts naturally reminds me of another Welsh Circuit friend, and indeed judge, my witty and lamented colleague, Clarke. No man, I believe,

\* "Subsequently M. P. for Carmarthenshire. He died in the year 1842."

was a greater verdict-getter than Nathaniel Gooden. He positively would not be refused. I have heard of him on his circuit, the Midland, as almost unrivalled in this respect. But certain it was not by his depth of law; for it was told of him, that, at a constitution once, some one said, 'Oh, sir, they' (the defendants) 'say, it is a remitter,'—'Oh! the scoundrels,' (answered he,) 'they'll say anything.' He was one of the most consistent high churchmen and high Tories I have ever known. When men quitted, as rarely happened in those days, the Tory party, Clarke would really look aghast, as if they had committed some horrible and atrocious offence, which he could not screw up his mind to believe. But when the change happened to be in the opposite direction, and any one came over to the Tory side, nothing could be more placable; nay, he treated them with a kindly and encouraging aspect as men who saw the line of their duty and followed it.

He was great in the Exchequer, his own walk, where he really was, as it were; the cock I have seen him sitting by his junior, Walton, who had put some utterly illegal question, as, 'What did you hear the man say about, what he had heard in the neighbourhood of the gang of smugglers?' When an objection was instantly taken on the other side, and Walton gave up the question, 'Put the question,—repeat your question, Mr. Walton,' growled Clarke; 'we always put that question here.' However, my Lord Chief Baron allowed it not, and then we saw Clarke's eyes uplifted, and his hands thrown up, as if the spirit of improvement, and reform, and innovation, and any 'thing most abhorred of Tories,' had at length reached the place he had hoped was sure to be the longest free from such inroads,—the bench of the Exchequer.

"Clarke had a certain kind of common sense which, set off by his great warmth of manner and fine portly figure, gave great weight to his words, and wells upplied the place of a more finished eloquence. Any approach to a pleasantry he was very far indeed from ever making; it would have detracted from the perfect seriousness with which he ever entered into his client's case: very different from Vaughan, who, not merely when called upon to laugh the adverse case of the plaintiff out of court, but also when of counsel with the plaintiff, would often perform that office. Yet Clarke, 'all unintentionally to create a laugh, and not very fond of any such testimony to his powers, would now and then make his audience merry without meaning it. As when the counsel had been pathetic on his orphan client's hard lot, 'Gentlemen,' said Clarke, 'why, I am myself an orphan,'—he was seventy odd years old, 'People's fathers and mothers cannot live for ever.' No one can doubt of the pathos raised before being suddenly dissipated by this unexpected sally,—not of humour, but of more anger at any pathos having been imported into the cause. So when a witness whom he was pressing with his angry, and oftentimes scolding, cross-examination, suddenly dropped down

in a fit, and some said it was apoplectic,—but privately Clarke heard it was epileptic, 'My lord,' said he, 'it's only epilepsy,'—she must answer the question,' as if the courts had taken a distinction between apoplexy and epilepsy.

"In my early days on the northern circuit, (the circuit, as we used to term it, for it was in truth equal to nearly all the rest put together,) I remember once a certain Will Lowndes, an original in some respects, and then disagreeable. He was excessively proud, being descended from the celebrated secretary of the treasury in King William's time; but he pretended to no knowledge whatever of finance beyond that of common arithmetic—the plainest propositions of which, however, he was quite ready to dispute, if any yokel should venture in his presence to give an opinion that two and two made four. His temper was dogged, rough, and irritable; and he took a pleasure in both saying and doing ill-natured things, wherefore when the wags of our bar chose to play a trick on Boswell, (or as he called it, 'ran their base humour on him,') by sending him two briefs, one in trover for an estate, the other in ejectment for title deeds, Will Lowndes readily lent his name as the leader with whom Boswell was to be. The latter entered court immediately after the delivery of the precious documents, the first and the last he ever saw marked with his name, and with that of an attorney said to live at *Humpton*, North Riding. The conspirators, well pleased, marked his all-important and self-sufficient air, and how he pressed through the crowd of briefless juniors, regarding them with contempt. It was all but expected he would claim a bag from some leader, and when he was observed to sidle up towards Law, a privy, if not a party, to the jest, the whisper ran round our table that he had asked a bag. It was, however, not so, he only was mentioning the curious point which arose upon the case of *Hox v. Gull*, in which conversion of a freehold was alleged; and Law said, the point being new, he recommended him to consult old Lamb, who had been his pupil, and was a sound lawyer as well as a good pleader. To Jemmy's annoyance, the records, if ever entered, were withdrawn, and he knew the real extent of his good fortune only from the attorney-general of the circuit at the next grand night at Lancaster.

"One night a very happy guess was made by Lowndes. Old Raine, father of my colleague Jonathan, and of Dr. Mathew, was a country schoolmaster, but of respectability, and having given up school-keeping, had been raised to the summit of his ambition by being put in the commission. He was as crusty of temper as Lowndes himself, but had less of a gentleman in his manner. Lowndes happened to come into a box at the theatre in York where Raine had usurped the place of the lady on Lowndes's arm, whereupon a dispute arose, in the course of which Raine somewhat roughly asked Lowndes 'if he knew who he was speaking to?' Lowndes had not the least knowledge of the kind, nor the least care about the matter, and

he quickly made answer—'No, indeed—but from your manner I should not wonder if you were a sulky fellow of a justice whom they call Old Raine.'

"The first time the ex-schoolmaster sat in judgment, a man was tried before the sessions for robbing a hen-roost, and acquitted for want of evidence against him. The chairman was

ordering him to be discharged as a matter of course; but Raine said, though he fully agreed, yet he conceived it would be well to have him first whipt. The other justices repressed this ebullition of professional zeal, and explained the difference between justices and schoolmasters in respect of whipping."

## CIRCUITS OF THE JUDGES.

(The Lord Chief Baron Pollock will remain in Town.)

SUMMER CIRCUITS. 1846.	NORTH WALES.	SOUTH WALES.	OXFORD.	HONK.	NORFOLK.	MIDLAND.	NORTHERN.	WESTERN.
Commission Days.	Lord Den- man	B. Rolfe	La.C.J. Tindal J. Maule.	B. Parke J. Coltman	B. Alderson J. Williams	J. Patteson J. Coleridge	J. Wightman J. Crosswell	J. Erie B. Platt
Saturday . July 4		Cardiff						
Thursday . . . 9			Abingdon	Hertford			York & City	
Friday . . . 10					Buckingham			
Saturday . . . 11			Oxford	Chelmsfd.				Winchester.
Monday . . . 13	Newtown	Carnar-			Northamp-			
Tuesday . . . 14		[then			Bedford	[ton		
Thursday . . . 16	Dolgelly							
Friday . . . 17			Worcester		Huntingdon	Oakham		Dorchester
Saturday . . . 18	Carnarvon	Haverford	[& City		Cambridge	Lincoln &		
Monday . . . 20		[west & Tn		Maldstone		[City		
Tuesday . . . 21								Devizes
Wednesday . . 22	Beaumaris	Cardigan			Norwich &	Nottingham		
Thursday . . . 23			Stafford		[City	[& Tn.	Durham	
Saturday . . . 25	Ruthin	Brecon						Exeter & Co.
Monday . . . 27				Lewes *		Derby		
Tuesday . . . 28					Ipswich			
Wednesday . . 29	Mold	Frestcign	Shrewsbury				Newcastle &	
Thursday . . . 30				Uxbridge			[Tn.	
Saturday . Aug. 1	Chester	Chester	Hereford			Leicest. & L.		Bodmin
Monday . . . 3						Coventry		
Tuesday . . . 4						Warwick	Cardale	
Wednesday . . 5			Monmouth					
Thursday . . . 6								Wells
Saturday . . . 8			Gloster & C.				Appleby	
Tuesday . . . 11							Lancaster	
Thursday . . . 13								Bristol
Saturday . . . 15							Liverpool	

\* Business to commence at 12 o'clock on Monday.

## ATTORNEYS TO BE ADMITTED,

Michaelmas Term, 1846.

### Queen's Bench.

#### Clerks' Names and Residences.

Ayre, John, jun., Bristol

Ashley, William Edward, 8, Elizabeth Street,  
Brompton; Newark-upon-Trent; and  
2, Brompton Terrace

Aikman, John Robertson, 68, Great Portland  
Street

Armitage, James, 35, Downham Road, New  
North Road

Anderson, Werr, 1, Stafford Place, Piccadilly;  
and Liverpool

Adams, Henry, 36, Southampton Buildings;  
Wellington Street; and Stoke Gabriel

Brooks, Thomas, 10, Lower Calthorpe Street;  
Derby; and Burton-on-Trent

#### To whom Articled, Assigned, &c.

William P. Hartley, Bristol  
Francis G. Sherrard, Bristol

John Would Lee, Newark

Charles Pearson, Guildhall  
J. Crosland Fenton, Huddersfield  
John Stevenson, King's Road

Charles Bardswell, Liverpool  
Charles Mielchmerr, Tonness  
George Hensman, Basing Lane

Francis Jessopp, Derby

- Bishop, Robert, Liskeard . . . . . John Sargent, Liskeard  
 Bell, Richard, Kingston-upon-Hull . . . . . John Thorney, Kingston-upon-Hull  
 Brown, Thomas Augustus, 16, Blandford Street, Portman Square; and Tonbridge . . . . . William Hartcup, Bungay  
 Boddington, George Lester, Kidderminster . . . . . William Boycott, jun., Kidderminster  
 Boykett, Thomas Hebbert, 1, Belinda Terrace, Islington . . . . . Edward Smith, Chancery Lane  
 Bremridge, Thomas Julius, 7, New Ormond Street; and Heavitree . . . . . Henry Melhuish Ford, Exeter  
 . . . . . John Mitchell, Wymondham  
 Beck, John Grant, 3, Judd Place East; and Cambridge . . . . . Charles Pestell Harris, Cambridge  
 Burton, William, 52, Gloucester Street, Queen Square; and Manchester . . . . . R. Meadowcroft Whitlow, Manchester  
 Biddles, John Henry, 2, Portland Place, Camberwell . . . . . Edward Barron, Bloomsbury Square  
 Berry, John Johnson, Stoke-upon-Trent . . . . . John William Ward, Newcastle-under-Lyme  
 Baker, Frederick, 39, A, Curzon Street, May Fair; and Derby . . . . . J. Blythe Simpson, Derby  
 . . . . . G. Brumell, Morpeth  
 Brumell, Francis, 27, Perceval Street, Northampton Square; and Morpeth . . . . . John Stevenson, King's Road  
 Barton, Samuel Milner, 52, Gloucester Street; and Didsbury . . . . . Thomas Higson, Manchester  
 Blackburn, Samuel Render, Leeds . . . . . J. Blackburn, Leeds  
 Bruce, William, 81, Hatton Garden; and Leeds . . . . . Richard E. Payne, Leeds  
 Brabner, Samuel Peeling, 15, Clarence Place, Kentish Town; Staple Inn; and Liverpool . . . . . Samuel Brabner, Liverpool  
 . . . . . Edward Chester, Staple Inn  
 Bowes, Richard, 11, Serjeants' Inn, Fleet St.; and Southwick . . . . . Robert Brown, Sunderland  
 Canning, Walter, Belle Vue, Handsworth, near Birmingham . . . . . William Fellowes, jun., Dudley  
 Cattell, Christopher William, 1, Brunswick Row, Bloomsbury . . . . . John Orde Hall, Brunswick Road  
 Clarke, Robert, jun., 5, Albion Place, Hyde Park Square; Duke Street; and Bath . . . . . Robert Clarke, Bath  
 . . . . . Edward King, Bath  
 Crossman, William, 56, Swinton Street, Gray's Inn Road; and Berwick-upon-Tweed . . . . . Thomas Gilchrist, Berwick-upon-Tweed  
 Cooper, Charles Sidney, Lewes . . . . . Thomas Cooper, Lewes  
 . . . . . W. D. Cooper, Lewes  
 Croft, John, 3, Jordan's Cottages, Lambeth . . . . . Frederick Smith, Basinghall Street  
 Cooke, Robert, 3, Wilmington Square; and Symond's Inn . . . . . Francis Stanier, Newcastle-under-Lyme  
 . . . . . W. A. S. Pemberton, Symond's Inn  
 Cartmale, John, Lichfield . . . . . Edward Wyatt, Lichfield and Whittington  
 . . . . . Thomas Hodson, Lichfield and Whittington  
 Chadwick, John Nurse, 3, Queen's Square; and King's Lynn . . . . . Boys R. Aldham, King's Lynn  
 Crosse, John Macartney, 8, Nelson Square; and Stowmarket . . . . . Adam Taylor, jun., Norwich  
 . . . . . J. Bayly Ransom, Stowmarket  
 . . . . . J. W. Flower, Evesham Street  
 Cole, George Henry, 3, Manchester Terrace, Liverpool Road . . . . . John Platt, Church Court, Clement's Lane  
 Campbell Robert Murray, 11, Bell Yard, Temple Bar; and Nottingham . . . . . John Brewster, Nottingham  
 . . . . . G. M. Cowley, Nottingham  
 . . . . . George Hopkinson, Nottingham  
 Dodd, Edward, 46, Swinton Street; and Warwick . . . . . Thomas Morris, Warwick  
 Dalley, John, 13, Bouverie Street, Fleet Street; and Bridgnorth . . . . . M. Heywood Williams, Bridgnorth  
 Davies, James, 18, River Street, Pentonville; and Hereford . . . . . Thomas Evans, Hereford  
 Dain, Horatio, 8, Walnut Tree Walk, Lambeth . . . . . William Leake, Devonshire Street  
 Dart, Philip Francis, Saville Place, New Burlington Street . . . . . Williams H. Brabant, Saville Place  
 Dixon, Ralph, 5, Bernard's Inn; Gower St.; and Furnival's Inn . . . . . Thomas Brown, Newcastle-upon-Tyne  
 . . . . . W. Cheek Bousfield, Gray's Inn Square  
 Davies, John Pryce, 25, Cranmer Place, Waterloo Road; and Welchpool . . . . . Charles Thomas Woosnam, New Town  
 . . . . . Joseph Jones, Welchpool

- Dowson, John, 3, Sebbon's Buildings, Upper Street, Islington  
 Desborough, L., jun., Grove Hill, Camberwell  
 Dimsdale, Frederick, 17, Clement's Inn; and Hadley  
 Driffield, Charles Edward, 53, Frederick Street, Gray's Inn Road  
 Dobinson, Henry, 14, Atmpton Street; and Carlisle  
 Duignan, William Henry, Walsall  
 Duffy, Richard, Nottingham  
 Duffield, William Ward, 9, Felix Terrace, Liverpool Road; and Great Baddow  
 Daintrey, Adrian, 21, John Street, Bedford Row; Kew Green; Turnham Green; and Kenton Street  
 Deere, John Morgan, 2, Frederick Place, Gray's Inn Road  
 Eastwood, A. Greenwood, Todmorden; Halifax  
 Elders, Thomas William, York  
 Fowler, James, 24, Great Ormond Street; and Birmingham  
 Ford, Henry, 22, Mount Street, Grosvenor Square; and Exeter  
 Foster, Lambert B., jun., Alfred Place, Blackfriars; and Norwich  
 Fenwick, John Clerevaux, 33, Stanhope St., Regent's Park; Queen's Street Place; and Camberwell  
 Fiske, Edward Brown, 5, Montpelier Street, Brompton; and Kensingland  
 Preston, William Antony, 14, Buckingham Street; Daglingworth; and Cirencester  
 Gundy, Frederick Walter, 9, Great Ormond Street; and Exeter  
 Greenhalgh, James, Bolton-le-Moors  
 Green, Robert Yeoman, 29, Tavistock Place; and Newcastle-upon-Tyne  
 Gordon, William Pierson, 13, Featherstone Buildings; Shrewsbury  
 Gates, Christopher Hill, 6, Frederick Street, Gray's Inn Road; Grantham  
 Grant, Greaves Tetley, Bradford  
 William Pringle, King's Road, Bedford Row  
 L. Desborough, Sise Lane  
 W. Borradaile, King's Arms Yard  
 W. W. Driffield, Prescot  
 W. Dobinson, Carlisle  
 George B. Stubbs, Walsall  
 George Rawson, Nottingham  
 Charles Butlin, Nottingham  
 Edward Swinborne Chalk, Chelmsford  
 A. Daintrey, Petworth  
 Alfred S. Crowdy, Swindon  
 W. H. Smith, Bedford Row  
 William Eastwood, Halifax  
 George Leeman, York  
 George P. Wragge, Birmingham  
 John Geare, jun., Exeter  
 John Elliott Fox, Finsbury Circus  
 Clement William Unthank, Norwich  
 John Fenwick, Newcastle-upon-Tyne  
 Hugh Shield, Queen's Street  
 R. Fiske, Beccles  
 R. E. Burroughes, Norwich  
 Charles Lawrence, Cirencester  
 John Hull Terrall, Exeter  
 James Cross, Bolton-le-Moors  
 Armorer Donkin, Newcastle-upon-Tyne  
 Thomas Harley Kough, Shrewsbury  
 Edm. Boyle Church, Southampton Buildings  
 George Kewney, Grantham  
 Johnson Atkinson Busfield, Bradford

[The remainder of this List will be given in our next number.]

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Common Law Courts.

#### III. PLEADINGS.

##### ABATEMENT.

1. *Non-joinder*.—A plea in abatement for non-joinder should pray judgment of the writ and declaration. It is not necessary to demur specially to a defective plea in abatement. *Davies v. Thompson*, 3 D. & L. 95; S. C. 14 M. & W. 161.

2. *Attorney's privilege*.—*Verification*.—To a declaration on the money counts, the defendant pleaded in abatement, that he was an attorney of the Court of Queen's Bench, concluding with a verification. The plaintiff replied, that

the defendant was also an attorney of the Court of Exchequer, concluding with a verification: *Held*, on general demurrer, that the replication was good in substance.

*Semble*, that both pleas and replication should have concluded with a verification by the record. *Walford v. Fleetwood*, 3 D. & L. 65.

##### ADDING COUNTS.

See *Reversion*.

##### ARBITRATION.

See *Issuable plea*, 2.

##### ASSAULT.

See *Liberum tenementum*, 2.

##### ASSUMPSIT.

1. *Allegation of request*.—On a general promise to do a certain act on request, or within a reasonable time after request, the declaration



must show that a request has been made, unless circumstances are shown which render the performance of the contract impossible, in which case the allegation of request becomes unnecessary.

A declaration for breach of promise of marriage alleged a promise to marry within a reasonable time after request; and that the defendant, after making the promise, had married another person, not stating she was then alive, and not alleging that any request to marry had been made by the plaintiff. The defendant pleaded that no request had been made.

*Held*, the declaration was good and the plea bad. The contract must be taken with reference to the feelings and intentions of the parties at the time they entered into the contract, and the defendant, being shown to have married another person, thereby committed a breach of contract, and dispensed with the necessity of an allegation of request. *Short v. Steve*, 31 L. O. 319.

2. *Moral consideration*.—Declaration in assumpsit alleged that the plaintiff had cohabited with the defendant as his mistress; that the defendant had seduced the plaintiff; that the plaintiff ceased to cohabit with the defendant; and that in consideration that the plaintiff would lead a moral life, the defendant promised to pay the plaintiff the sum of 60*l.* annually.

*Held*, had on general demurrer; a mere moral consideration not being sufficient to support an express promise. *Beaumont v. Reeve*, 31 L. O. 368.

And see *Policy of Insurance*.

#### ATTORNEY.

See *Abatement*; 2; *Resuable plea*.

#### BANKRUPTCY.

See *Duplicity*.

#### BILL OF EXCHANGE.

1. *Judgment non obstante veredicto*.—In debt by A. against B., for goods sold, B. pleaded, that before action, C., the agent of A. in that behalf, obtained from B. for and on account of the debt, a bill of exchange accepted by B., payable at a period which had not elapsed, and that C. handed over to A., and A., before action brought, received the same for and on account of the debt, &c.

Replication, that C. received the bill without the consent, knowledge, or authority of A., and that afterwards, and before action, A. gave notice thereof to B.; and that afterwards, and within a reasonable time, the bill was returned to B. by C. Rejoinder, that C. received the bill with the consent, &c. of A.

The (so called) bill was taken, (a blank being left for the name of the drawer), without the plaintiff's authority, and the plaintiff, by letter to the defendant, repudiated the transaction, but did not return the bill.

The jury having returned a verdict for the defendant, the court granted a new trial without costs; but

*Held*, that the plaintiff was not entitled to judgment *non obstante veredicto*. *Husley v. Bull*, 7 M. & G. 571.

2. In an action by an indorser against the acceptor of a bill of exchange, the acceptor cannot set up as a defence to the action, that at the time he accepted the bill the drawer was an undetested bankrupt, and that all his property had passed to his assignees. *Bradbourne v. Gardner*, 31 L. O. 439.

#### BOND.

*Replication*.—*Conclusion*.—Plaintiff declared in debt on a bond, conditioned for the payment of 1,000*l.* on a day certain, in pursuance of the terms of an indenture of even date therewith; and for the performance of the covenants contained in that indenture. The defendants pleaded generally performance of all things mentioned in the condition. The replication denied the payment of the sum of 1,000*l.* made *et forin*, and concluded to the contrary. *Held*, upon special demurrer to the replication, that its conclusion was proper; since to make the plea good, it must be taken to allege that the money was paid on the day mentioned in the condition.

*Sent*, that the plea would have been bad on special demurrer, if nothing general was averred. *Reake v. Minter*, 31 L. O. 443. Cases cited in the judgment: *Smith v. Douglass*, 253; *Darbyshire v. Barker*, 5 Moore, 189; *Smith v. Bond*, 11 Bing, 195.

#### BREACH OF COVENANT.

See *Covenant*.

#### CHURCH-RATE.

See *Prohibition*.

#### CONSIDERATION.

See *Prohibition*.

#### CONSIDERATION.

See *Assumpsit*; *Judgment non obstante veredicto*.

#### COVENANT.

*Farm lease*.—*VIDELICET*.—*Immaterial allegation*.—*Breaches*.—*Trespass*.—Plea, that plaintiff had covenanted, with a proviso for a re-entry in case of breach, not to set over or otherwise part with his lease. *Breach*, that he did set over his lease, to wit, by pawning, pledging, and mortgaging the said indenture of lease to certain creditors; wherefore the defendant entered, *Replication*, that he did not set over the said indenture by pawning, pledging, or mortgaging the said indenture to the said supposed creditors; *Held*, that the replication was bad; it traversing an immaterial allegation, laid under a videlicet, and therefore too large.

Another plea alleged that the plaintiff covenanted, with a proviso for re-entry in case of breach, that he would not sow, reap, receive, or take from the arable land or any part of the same more than two crops of corn successively, but would every third year summer-fallow, or lay the arable land down with rye-grass and clover seed, or plant with potatoes, or sow with peas or beans, which should be twice hoed. *Breach*, that he did sow and take three crops of wheat successively, and that he did not every third year summer-fallow or lay the arable ground

with ryegrass and clover seeds, nor plant with potatoes, nor sow with peas, which were twice or at all well sown. Wherefore the defendant entered a replication; that plaintiff did not sow, crop, &c., more than two crops, &c., and did every third year summer-fallow a part, &c., and lay down with ryegrass, &c., another part, &c., and did so another part, &c., with peas, and the residue of the arable land with beans, &c. Held, on special demurrer, that the covenant against over-cropping was distinct from that as to the mode of cultivation; that a breach of the former was well assigned, but not of the latter; that the replication was good as to the former, and not vitiated by the reference to the latter. *Hammond v. Colls*, 3 D. & L. 164.

Case cited in the judgment: *Stubbs v. Lainsop*, 1 M. & W. 728.

CRIME, MURDER.

*Plea of separation by deed.*—In trespass for crime con. the court permitted the defendant to plead not guilty, and also, *realeat quantum*; that before and at the time of the committing the trespass, the plaintiff had relinquished and renounced the comfort and fellowship of his wife, and had finally separated himself by deed from her, and was living apart from him. *Harvey v. Watson*, 7 M. & W. 644.

Case cited in the judgment: *Wenden v. Timbrell*, 5 T. R. 357.

DEBT, INDEBTEDNESS.

See Judgment Debt.

DEMURRER.

*Trial of issues in law before trial of issues of fact.*—The court refused to interfere by directing issues in law to be argued before the trial of issues in fact, it not appearing that the decision of the former would have any bearing on the latter. *Roberts v. Tynlor*, 7 M. & W. 659.

Case cited in the judgment: *Burdett v. Coleman*, 10 M. & W. 681.

See *Nat. Tel. Repert.*

DUPLICITY.

*T. Bankruptcy.*—*Foreign judgment.*—Assigned by the assignees of P, a bankrupt, on a policy of insurance made by P, before his bankruptcy. Plea as to 788; that the policy was made in Scotland; that the said sum was duly tendered and arrested according to the law of Scotland, at the suit of G, for a debt due to him; that thereupon the said sum became, and was, according to the law of Scotland, in custody of the law; that afterwards G. obtained judgment, which was final and conclusive against P, and the plaintiffs as his assignees; and that by the law of Scotland all right and claim of P, to the said sum have been, and still are, by reason of the premises, wholly barred, defeated, and destroyed; and the plaintiffs, as assignees, never acquired any right or title thereto.

Replication, that the defendants broke their promise of their own wrong; without this, that all right and claim of P. to the said sum is

wholly barred, and that the plaintiffs, as assignees, never acquired any right or title thereto. Held, bad for duplicity. *M'Leod v. Schultze*, 3 D. & L. 60. See *De la Vega v. Vianna*, 4 B. & Ad. 284.

2. *Declaration for penalties under local act.*—*Venue.*—A local act for improving the streets and public places, &c., in the township of Blackburn, directed that every male person of the full age of twenty-one years, residing in or within three miles of the township, and either being rated to the poor rate in the annual sum of 30l. or upwards, or seized or possessed of lands within the township of the annual value of 30l. for the estate therein mentioned, should be a commissioner for carrying the act into execution; and subjected to a penalty of 50l. to be sued for in an action of debt, &c., any person who should act as such without being duly qualified; and enacted, that in such action the proof of qualification should lie on the defendant. Held, that a declaration against a party for this penalty, which alleged generally that he acted although he was not at the time duly qualified, was sufficient, and that it need not state the particulars of his qualification.

Since the rule of M. T. 4 W. 4, s. 8, a declaration for a penalty given by statute, which makes the action local, need not aver that the penal act was done in the particular county, if that county be the venue in the margin of the declaration. *Cook v. Swift*, 14 M. & W. 235.

FARM LEASE.

See Covenant.

FOREIGN COURT.

*Jurisdiction.*—A declaration in debt on the judgment of a foreign court need not state that the court had jurisdiction over the parties or cause. *Robertson v. Struth*, 5 Q. B. 941.

Cases cited in the judgment: *Obreini v. Bligh*, 8 Bing. 535; *S. C.* 1 Mod. & Scott, 477; *Sinclair v. Finser*, cited on the trial of the Duchess of Kingston, 28 How. St. Tr. 463; *Walker v. Water*, 1 Doug. 159, 6.

FOREIGN JUDGMENT.

See Duplicity.

GUARANTEE.

See Variance.

INFORMATION.

*Plea of not guilty to.*—An information at the suit of the Attorney-General stated, that the Queen was seized in her demesne as of fee of Waltham Forest, and that the Queen and her ancestors had enjoyed the said forest, and the game of beasts and fowls of forest, chase, and warren therein, and all rights, &c., appertaining thereto, without disturbance, until the defendant unlawfully made a fence and ditch on the soil of the forest, and inclosed five acres thereof, and separated the same from the residue of the forest, and encroached and usurped thereon, to the great injury and disturbance of the Queen in her said forest, to the damage and destruction of the vert and venison thereof, and to the disinherison of the Queen. *Semble*,

that a general plea of not guilty might be pleaded to this information. *Attorney-General v. Brown*, 14 M. & W. 300. See *Porter's case*, 1 Rep. 17, a.

#### INSOLVENT.

See *Replication*.

#### ISSUES IN LAW.

See *Demurrer*.

#### ISSUABLE PLEA.

1. *Attorney*.—A plea of non-delivery of signed bill is an issuable plea. *Wilkinson v. Page*, 6 M. & G. 1012.

2. *Arbitration*.—A policy of insurance contained a clause, that if disputes arose, the matter should be referred to arbitration. In an action on the policy, the defendants, being under terms to plead issuably, pleaded that the case had been submitted to arbitration, that the arbitrator had made his award, and payment into court of the sum so found due from the defendants.

*Held*, this was an issuable plea. *Heap v. Thorp*, 31 L. O. 113.

#### JUDGMENT-DEBT.

*Consideration*.—*De Injuria*.—To assumpsit by payee against maker of a promissory note, the defendant pleaded that the note was given for a judgment-debt, and that there was never any other consideration. *Replication de Injuria*. On demurrer to the replication: *Held*, that both plea and replication were bad. *Baker v. Walker*, 3 D. & L. 46.

Cases cited in the judgment: *Poplewell v. Wilson*, 1 Sira. 264; *Serle v. Waterworth*, 4 M. & W. 9; *S. C.* 6 Dowl. 684.

#### JUDGMENT NON OBSTANTE VEREDICTO.

See *Bill of Exchange*, 1.

#### JURISDICTION.

See *Foreign Court*.

#### LEAVE AND LICENCE.

See *Trespass*, 1.

#### LIBERUM TENEMENTUM.

1. *Vi et armis*.—*Trespass*.—"Liberum tenementum" is a good plea to trespass for breaking and entering the plaintiff's dwelling-house, though the premises are particularly described in the declaration. In trespass for breaking and entering a dwelling-house, the allegation *vi et armis* does not imply a forcible entry. *Harvey v. Bridges*, 3 D. & L. 55.

Cases cited in the judgment: *Cocker v. Crompton*, 1 B. & C. 489, 5 S. C. 3 D. & R. 719; *Cooke v. Jackson*, 9 D. & R. 496; *Lowe v. King*, 1 Saund. 76; *Newton v. Hazland*, 1 M. & G. 644; 1 Scott, N. R. 474.

2. *Assault*.—To a declaration of trespass *quare clausum fregit*, containing a count for an assault, the defendants pleaded *inter alia, lib. tenem.* in *J. W.*, and a justification, on that ground, of the trespass, and that because the plaintiff "was unlawfully in possession," the defendants, as servants of *J. W.*, and by his

command, ejected her, and in so doing, because she resisted, committed the assault. The plaintiff replied that she was lawfully possessed, and was lawfully entitled to her possessions as against the defendants; with a special traverse, that the plaintiff was unlawfully in possession or occupation. *Held*, on special demurrer to the replication, that the plea was substantially one of *lib. tenem.*, and therefore bad, as attempting to justify an assault.

The declaration also contained a count *de bonis asportatis*. The defendant pleaded *inter alia, lib. tenem.* in *J. W.*, and that *J. W.* leased the premises to the plaintiff, with a proviso for re-entry for non-repair; that the premises were out of repair; and that the defendants entered as the servants of *J. W.*, and because the plaintiff was unlawfully in possession, &c., (as in the above plea); and also justifying the removal of the goods of the plaintiff, which were wrongfully placed on the premises, to a convenient distance, doing no damage to the same. The plaintiff replied as to so much of the plea as related to the last count in the declaration, that after the removal of the goods, the defendants converted them to their own use. *Held*, on special demurrer, that the replication was good. *Roberts v. T aylor*, 3 D. & L. 1.

#### LOCAL ACT.

See *Duplicity*, 2.

#### NEW ASSIGNMENT.

*When necessary*.—If to an action for goods sold and delivered a general release be pleaded, the plaintiff is not, under a replication of "*non est factum*," entitled to show that the debt specified in the particulars of demand, and in respect of which the action is brought, was excepted from the operation of the release; and in order to do so a new assignment is necessary. *Jubb v. Hills*, 31 L. O. 222.

#### NON-CONCESSIT.

See *Patent*.

#### NON-JOINDER.

See *Abatement*, 1.

#### NUL TIEL RECORD.

*Concluding to the country*.—*Frisolous Demurrer*.—If a plea of *nul tiel record* conclude to the country, the plaintiff may reply, without regard to the improper conclusion, and is not bound either to join issue to the country, demur, or move to strike out the improper conclusion; and a demurrer to a replication, upon the ground of its having disregarded such a conclusion, was set aside as *frivolous*. *Towns and v. Smith*, 31 L. Q. 201.

#### PARTNERSHIP.

*Replication taking issue on an immaterial allegation*.—*Award of replender*.—To assumpsit by A., B., and C. against D., upon a money demand, D. pleaded that the plaintiffs carried on business in partnership; that the plaintiff A., with the privity and concurrence of the plaintiffs B. and C., requested A. to sell cer-

tain property belonging to D., B., and C., as co-partners, which D. thereupon agreed to do; that at the time A. requested D. to sell, and also at the time of the sale, and of the making the loans and advances by D. to A. therein-after mentioned, D. believed A. to be the sole owner of the property, and that he had full authority to dispose of it for his sole use and benefit, D. having no knowledge that B. and C. had any interest in it; that after D. had been so retained and employed to sell the property, and before it was sold, and before he had any notice or knowledge that A. was not solely possessed of and interested in the property, D., at the request of A., lent divers sums of money to A.; that before D. lent the said money to A., it was agreed between them that D. should retain, deduct, and reimburse himself the full amount out of the proceeds of the property; that D. was induced to lend, and did lend, the said money to A. upon the faith, and in consideration of such agreement; and that D. did sell and dispose of the said property for A., the other plaintiffs suffering and permitting A. to deal therewith as his own sole property, without objection or interference; and the plea then justified retaining the money to reimburse D. for such advances under the said agreement.

To this plea the plaintiffs replied that B. and C. did not suffer or permit A. to deal with the said property as his own sole property.

A verdict having been found for the plaintiffs: *Held*, on motion to arrest the judgment, that enough of the plea remained unanswered to constitute a sufficient bar to the plaintiff's right to recover; that the replication traversed an immaterial allegation; but that the proper course was, not to arrest the judgment, but to award a replender. The rule that a replender is never awarded in favour of the party who made the first fault, applies only where the issue is found against that party. *Gordon v. Ellis*, 7 M. & G. 667.

Cases cited in the judgment: *Jones v. Yates*, 9 B. & C. 532; 4 M. & R. 613; *Sparrow v. Chisman*, 9 B. & C. 241; 4 M. & R. 206; *Wallace v. Kelsall*, 7 M. & W. 264; *Kemp v. Crewes*, 1 Leal. Raym. 167; *Atkinson v. Davies*, 11 M. & W. 236.

#### PATENT.

*Plea of non-concessit*.—*Abstract of pleas*.—In case for the infringement of a patent, where the effect of the letters patent is set out. *Semble*, that *non-concessit* is a good plea: *Held*, also, that a plea alleging that the plaintiff falsely represented to the Queen that the invention was an improvement,—that her Majesty confiding in such representation, made the supposed grant,—that such representation was false,—and that the said supposed invention was not an improvement,—might properly be pleaded together with a plea, that “the invention was of no use to the public,” the two pleas not being satisfactorily the same: *Held*, also, that the first-mentioned plea was sufficiently described in the abstract as a plea, that “the

invention was no improvement.” *Bedells v. Massey*, 7 M. & G. 630. See 4 M. & G. 995.

#### PENALTIES.

See *Duplicity*, 2.

#### PENAL STATUTE.

See *Venue*.

#### POLICY OF INSURANCE.

*Plea bad as amounting to non-assumpsit*.—To a declaration on a policy of assurance, alleging that the insurance was made by A. as agent for the plaintiff and on his account, and for his use and benefit, and that A. received the order for, and effected the insurance as such agent, the defendant pleaded the policy was not made by A., as agent for the plaintiff, or on his account, or for his use and benefit, and that A. did not receive the order for, or effect the insurance as such agent: *Held* bad, on special demurrer, as amounting to non assumpsit. The defendant also pleaded, that there was not any agreement signed by the master and seamen, or any of them, specifying what wages each seaman was to be paid, the capacity in which he was to act, or the nature of the voyage in which the ship was to be employed: *Held* bad, on general demurrer. *Redmond v. Smith*, 7 M. & G. 457.

Cases cited in the judgment: *Sutherland v. Pratt*, 11 M. & W. 296; *Dowl. N. S.* 813; *Wainhouse v. Cowie*, 4 Taunt. 178; *Darby v. Newton*, 6 Taunt. 544; 2 Marsh. 252; *Johanson v. Sutton*, 1 Dougl. 254; *Camden v. Anderson*, 5 T. R. 709; 6 T. R. 723; 1 B. & P. 272; *Chambers v. Bell*, 3 B. & P. 604; *Toulmin v. Anderson*, 1 Taunt. 227; *Hodson v. Fullarton*, 4 Taunt. 787.

#### PROHIBITION.

*Citation*.—*Church-rate*.—A citation, stating only, in the matter of charge, that the party cited, (a parishioner of G.) wilfully and contumaciously obstructed or refused to make or join or concur in the making of a sufficient rate for providing funds to defray the expense of the necessary repairs of the parish church, does not show an offence cognisable by the Ecclesiastical Court.

To a citation framed as above, the parishioner appeared under protest. The judge of the Ecclesiastical Court overruled the protest, and ordered the party to appear absolutely. He thereupon declared in prohibition, setting forth the citation and the other proceedings. On demurrer to the declaration, *Held*, that the declaration was good, the citation being insufficient to give jurisdiction. And that the suit in prohibition was not premature. *Francis v. Steward*, 5 Q. B. 984.

Cases cited: *Steward v. Francis*, 3 Curt. 209, 215, 216, 223, 226; *Veley v. Burder*, 12 A. & E. 265, 302; *Cooper v. Wickham*, 2 Curt. 303; *Greenwood v. Greaves*, 4 Hagg. Ecc. Rep. 77; *Veley v. Gooling*, 3 Curt. 233; *Rogers v. Davenant*, 1 Mod. 194, 236.

#### PVIS DARRIEN CONTINUANCE.

See *Release*.

## RAILWAY COMMITTEE.

See Release.

## RELEASE.

*Plea puis darrein continuance.*—*Railway Committee.*—In an action by the provisional committee of a projected railway against the engineer of the company, for a breach of contract, two of the plaintiffs executed a release, which the defendant pleaded *puis darrein continuance*. The court refused to set aside the plea, it appearing that one of the releasors had a substantial interest in the company, and was not a mere trustee. *Rawstorne v. Gandell*, 31 L. O. 578.

## REFLEADER.

See Partners.

## REPLICATION.

*Discharge under Insolvent Act.*—In an action of assumpsit the plaintiff cannot, under a general replication of not indebted *modo et forma* to a plea of set off, give evidence of his discharge under the Insolvent Debtors' Act. The discharge ought to be specially pleaded. *Ford v. Dornford*, 31 L. O. 464.

And see *Bond*; *Partners*.

## REVERSION.

*Adding counts.*—*Several pleas.*—In case, for an injury to the plaintiff's reversion, by destroying a chimney, &c., parcel of the plaintiff's messuage, the plaintiff was allowed, after the expiration of the term allowing the appearance of the defendant, to add counts, for removing the defendant's messuage without shoring up the plaintiff's messuage, whereby the plaintiff's chimney, which was entitled to the support of the defendant's messuage, was damaged, and for unskillfully pulling down the defendant's messuage, whereby the chimney of the plaintiff's messuage was injured. And the defendant was allowed to plead: 1st, to the first count, not guilty, by statute; 2ndly, to the same, that the chimney was a private nuisance; 3rdly, to the same, that it was a public nuisance; 4thly, to the second and third counts, not guilty; 5thly, to the second count, that the plaintiff's messuage was not entitled to the support of the defendant's messuage; and 6thly, to the whole declaration, leave and licence. *Langford v. Woods*, 7 M. & G. 625.

Cases cited by the court: *Ross v. Clifton*, 11 A. & E. 631; 6 Dowl. 1033; *Haine v. Davey*, 4 A. & E. 892; 6 N. & M. 336.

## SEPARATION.

See *Crim Con.*

## SEVERAL PLEAS.

See *Reversion*.

## TRESPASS.

1. *Leave and licence.*—To an action on the case by a reversioner for an injury to his reversionary interest, the defendant pleaded, that he was the occupier of the adjoining house and wall, and that whilst he was repairing his dwelling-house, by accident and against his

will, and without any default on his part, it fell down; and in falling, fell upon the adjoining wall and close of the plaintiff, and threw the plaintiff's wall down; that thereupon the defendant, within a reasonable time, rebuilt the wall at his own expense, and in so doing committed the grievances mentioned in the declaration, *quæ est eadem*.—*Held*, bad on special demurrer, for not showing that the defendant had the leave and licence of the tenant or of some party having authority, to allow him to come on the land. *Taylor v. Steward*, 3 D. & L. 161.

2. *Lien.*—Where A. deposits a chattel with B. as a security of the repayment of a debt, an agreement to that effect is entered into between them, and A., by his own wrongful act, and in violation of the terms of the agreement, resumes possession of the chattel. *Held*, that the lien or special property, which the defendant had in the chattel, was not terminated by the wrongful act of A., and that in an action of trespass the agreement was admissible in evidence under the plea that A. was not possessed of the chattel. *Richards v. Sandys*, 31 L. O. 77.

And see *Liberum tenementum*, 1.

## VARIANCE.

*Guarantee.*—In an action on a guarantee, the declaration stated a promise by the defendant, that in the event of A. M. making default in payment of a sum of money, he the defendant would, immediately on such default, pay the same to the plaintiff. In the guarantee itself the terms were, "in the event of A. M. making default, I will, immediately upon such default being made, and a letter being sent to me addressed, &c., giving me notice of such default, pay, &c." *Held*, that there was a material variance between the declaration and the guarantee; the former alleging an absolute promise to pay on default, while the promise in the latter was coupled with the condition of sending a letter, &c., which was a material qualification. *Higgins v. Dixon*, 3 D. & L. 121.

## VENUE.

*Penal statute.*—*Party grieved.*—*Omission of contra formam statuti.*—The enactments of stat. 31 Eliz. c. 5, s. 2, and stat. 21 Jac. 1, c. 4, s. 2, requiring that in actions on penal statutes the venue shall be laid in the county where the offence was committed, do not apply to actions of debt brought by the party grieved to recover a penalty expressly given to him, as for extortion under stat. 1 & 2 P. & M. c. 12, s. 2.

A count on stat. 1 & 2 P. & M. c. 12, s. 2, alleged that plaintiff's horse was distrained damage feasant, delivered to defendant as pound-keeper, and by him impounded and kept in the pound for one whole distrest; and that while the horse was so impounded, defendant, being such keeper, demanded and took from plaintiff, for keeping the same in pound, 3s., being more than the sum of 6d. for one whole distrest.—*Held*, bad, on motion in arrest of judgment, for not laying the act as done against

the form of the statute; though the count went on to say "whereby and by force of the statute in such case," &c., "an action hath accrued to the plaintiff, being the party grieved, to demand," &c., *6l.*, "and also the further sum of 2s. 8d., the last mentioned sum being the sum of money which the defendant took above the sum of 4d. for such whole distress. *Rs/o. n. Bousfield, 6 Q. B. 100.*

Cases cited in the judgment: *Barth v. Spencer*, Swannell, 3 M. & W. 603; *Callford v. Shawford*, 1 Show. 353, S. C. 5 All. 110; *Blundell v. Mod.* 129; *Carth.* 232; *Comb.* 194; *Holt*, 522; *Barber v. Tilson*, 2 M. & A. 842; *Pope v. Davis*, 2 Taunt. 352; *Le v. Clarke*, 2 Fash. 333; *Allen v. Stear*, Cro. Eliz. 619.

And see *Regent v. ...*

See *Abatement*, ...

VI. ET ARMS.

See *Liberty of the Press*, ...

# RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Rolls Court.

66th ORDER OF 1845.

*Duncombe v. Levy*, May 22, 1846.

A second order to amend cannot be obtained as of course after the answer of a defendant, though other defendants may not have answered.

This was a motion to discharge an order to amend, obtained as of course for irregularity. It appeared that there were two defendants to the original bill, Levy and Lewis. Levy put in a sufficient and leaving an insufficient answer. The plaintiff excepted to Lewis's answer, and then amended, requiring Lewis to answer the exceptions and amendments together, but not requiring any further answer from Levy. Lewis put in his answer, and the plaintiff obtained the order to amend to which both defendants were required to answer, which was the object of the present motion to discharge.

Mr. Southgate, for the motion, cited *Davies v. Proud*, 3 B. & A. 273.

Mr. Hallett, contra, relied upon 2nd and 33rd sec. of Order 16 of 1845, and partly upon the difference between the wording of the 66th Order, and the 13th Order of 1828.

Lord Langdale, after stating the facts, said, that he thought the case clearly came within the 66th Order, and that the order to amend was irregular, in being obtained as of course. It had been said that there was an inconsistency between the 66th Order and the 16th Article of the 10th Order, but he did not think so. And he would amend the former to construe the New Order by the words contained in them, and not by reference to former orders, which they were intended to supersede sometimes to modify.

## Vice-Chancellor of England.

*Whitfield v. Lequentre*. April 30th, 1846.

TAKING BILL PRO CONFESSO.—CONSTRUCTION OF ORDERS 77 & 79 OF MAY, 1845.

Where a defendant has not put in his answer in due time, under the 77th of the Orders of May, 1845, and the plaintiff has given the notice required by the 79th of those Orders, the court will order the clerk of the records to attend with the bill for the purpose of its being taken pro confesso, although a writ of attachment may not have been issued.

THIS was a motion that the clerk of the writs and records might be directed to attend with the bill for the purpose of its being taken pro confesso. A similar order had been obtained, but the register had refused to draw it up, conceiving that according to the terms of the 79th Order of 1845, a writ of attachment ought first to have been issued. The affidavit in support of the motion stated that after the appearance of the defendant inquiries had been made to ascertain the defendant's place of residence, and that the deponent was unable, although he had exercised due diligence to procure a writ of attachment, or any subsequent process for want of answer to be executed against the defendant, and it was believed he was out of the jurisdiction. The affidavit also stated, that the notice in the London Gazette, required by the 79th Order of May, 1845, as a preliminary step, previous to taking the bill pro confesso, had been duly inserted.

Mr. Hafford, for the motion, cited *Courage v. Fardell*, 4 Hare 481.

The Vice-Chancellor said that it did not appear to be necessary that an attachment should be actually issued previous to such an application, and ordered that the clerk of the records and writs should attend with the bill on the next seal.

## Queen's Bench.

(Before the Four Judges.)

*The Queen v. William Jones*. Easter Term, 1846.

RATING.—EXEMPTION OF SOCIETIES UNDER 6 & 7 VICT. C. 36.

The statute 6 & 7 Vict. c. 36, exempts from the poor rate property occupied by societies established exclusively for the purpose of science, literature, and the fine arts; they are to be supported wholly or in part by voluntary contributions, and shall not, and by their laws, may not, make any dividend, gift, division, or bonus in money unto or between any of their members.

Held, that to bring a society within the provisions of the act it must appear not only that the members do not participate in any profits, but that by the rules of the society they are prohibited from doing so.

Quære: Whether a religious tract society can be termed a literary society within the meaning of the act.

A certificate, dated the 16th October, 1843, was granted stating that certain houses and premises situate in the parish of St. Gregory, by St. Paul, in the city of London, and occupied by a society called The Religious Tract Society, were entitled under the 6 & 7 Vict. c. 36, to be exempt from the poor-rate. A rate having been made in which the premises of this society were omitted, an appeal was tried at the quarter sessions, and the sessions ordered the certificate of the barrister to be annulled, subject to a case for the opinion of the court. The society is supported by annual voluntary contributions, and its object is to promote the knowledge of the Christian religion by the circulation of religious tracts and treatises on various literary and scientific subjects, subservient to the diffusion of religious principles. The members of the society never have derived any profit from the undertaking, nor was it ever contemplated by the rules of the society that the members should ever receive any dividend or profit. The statute exempts societies established exclusively for the purpose of science, literature, and the fine arts; and they must be supported wholly or in part by voluntary contributions, and shall not, and by their laws may not, make any dividend, gift, division, or bonus in money unto or between any of its members.

Mr. Robinson, in support of the order of sessions, contended, first, that this was not a society exclusively devoted to literature, science, or the fine arts; that literature could not be said to be its sole object, but merely the means by which the objects of the society were promoted. Secondly, that this society does not come within the provisions of the statute, which contemplates cases not only where the members of the society do not divide any dividend or bonus in money, but where, by the rules of the society, the members are prohibited from doing so; and that inasmuch as the members of this society may at some time divide some of the proceeds, they do not come within the exemption.

Mr. Serjeant Talfourd, contra, contended that this society came within the spirit and meaning of the statute; and that although there was no law of the society actually prohibiting any distribution of the funds, it was sufficiently manifest that by the constitution of the society no profit to its members was ever contemplated. Secondly, this society circulates through this and other countries tracts on religious and scientific subjects, and it is not the less a literary society because it has a higher and nobler object in view than literature alone.

Lord Denman, C. J. There is no doubt whatever that the requisitions of the statute are that the laws of the society shall contain an express enactment that there shall not be any division of the funds of the society among its members. It is not enough to say that there is nothing in the regulations to countenance such a division, but it is expressly required that any division should by the laws of the society be rendered impossible. That provision in the

statute does not admit of any exception. On the other point I do not desire to express any positive opinion, but will only observe it has been strongly urged in argument that it would be strange to say that this was not a literary society, when it is connected with the highest objects of literature, and is intended to awaken the highest energies of literary men for the purpose of diffusing by them the blessings of religion: yet it is more surprising that if that was intended by the legislature as a cause of exemption from rating, it was not included in the list of exemption as "religious and charitable societies," when "literary and scientific societies" are so distinctly put forward. There seems much reason to doubt whether any such intention existed.

Mr. Justice Patteson. I am of the same opinion, that the first objection is a good one. The statute does not merely say that no such division of the funds does take place, but that by the laws of the society no division may take place. It therefore appears to me that there must be a prohibitory clause to that effect; and that if there was no such law, that the society did not come within the provisions of the statute. On the other point I do not give any positive opinion. This society does not appear to fall within the act of parliament, it is not a society for literature or science, or for the fine arts exclusively, or even at all; but to be within the act it must be for one of these objects exclusively. This appears to be a society for higher and better purposes than those of mere literature; and though it disseminates books for that purpose, still literature is made subservient to the dissemination of religious principles. Its real object, therefore, is not literature, but religion, and for that reason I am inclined to think that it does not come within the provisions of the statute.

Mr. Justice Williams. I am of the same opinion. It seems to me that as there has not been passed any law of the society preventing the division of profits, although such division has not taken place, and may possibly never take place, the society has not brought itself within the words of the statute. This is a case of an exemption from a legal liability, and the society must therefore distinctly bring itself within the exemption. It may be said, and indeed has been, that to propose a law to prohibit the members of this society from dividing the profits among themselves would have been impertinent and superfluous, and that it would have been somewhat like passing a law that the members should not steal; but whatever may be the strangeness of requiring such a law in this case, it is clear that the terms of the act of parliament must be complied with. Such a form of declaration as is required by the act must be made in order to bring the society within the exemptions it contains. On the other point it seems to me that it is impossible to say that this society is exclusively a literary or scientific society or for the propagation of the fine arts, for I find that although all these things may be employed, they are to be made in every case subservient to the purposes of religion.

Mr. Justice Wightman. The act of parliament was passed for the purpose of exempting particular societies from the operation of a general law. To enjoy that exemption these societies must show that they fulfil the required conditions. Is that so here? It is required that members of the society should not divide the profits derived from their funds, and that by laws of their own they should be distinctly prevented from doing so. It is not sufficient to say that there does exist among the laws of the society an affirmative law declaring how the funds shall be employed, there must be a prohibitory provision declaring what shall not be done with those funds. For the want of such a prohibitory law it seems to me that this society does not come within the description of the exempted societies mentioned in the statute. With respect to the other question, which is indeed by far the more important one, I think that the society does not come within the exemption, and if this is an oversight in the act of parliament, it may speedily be remedied. It is not a society for literature, science, or the fine arts. They are not sought to be extended or promoted by the society, and most certainly not exclusively. The society is exclusively devoted to the diffusion of the knowledge and influence of Christianity: literature and science are used by the society only as means to a higher and better purpose, as all the books of the society emphatically declare. It is not necessary to decide this case upon this point, for the other is sufficient to dispose of the question of the right to exemption from the rate.

Order of sessions confirmed.

Queen's Bench Practice Court.

*Reginald v. the Justices of Anglessea.* Easter Term, 1846.

CERTIORARI.—WHEN TO BE MOVED FOR.

*A certiorari to bring up an order of justices will not be allowed after the expiration of the six calendar months limited by the stat. 13 Geo. 2, c. 18, s. 5.*

At the Michaelmas quarter sessions held for the county of Anglessea, on the 10th of October last, an order was made by the justices, subject to a special case. No steps were taken for the purpose of obtaining a certiorari to bring up the proceedings until Saturday the 11th of April, (the day after Good Friday,) when, upon application at the judge's chambers, it was found that in consequence of the Easter holidays no judge would attend until the 15th, which was one day beyond the six calendar months next after the order of sessions was made. Application was subsequently made to

Copleidge, J., at chambers, for his fiat, but his lordship referred the parties to the court. Accordingly,

Peacock now moved that a certiorari might issue *nunc pro tunc*, and submitted that as the attempt to apply within six calendar months had been frustrated by the occurrence of the Easter holidays, this was a proper case for the indulgence of the court. He admitted, however, that he had been unable to find any case in which the writ had been allowed after the expiration of the six calendar months limited by the statute 13 Geo. 2, c. 18, s. 5.

Wightman, J. Then it seems to me that I have no discretion. This application must be governed by the statute, and according to that you are out of time.

Application refused.

Common Pleas.

*Hodges v. Topliss and another.* Easter Term, 1846.

DEFAULT IN NOT GOING TO TRIAL.—PAUPER PLAINTIFF LIABLE TO COSTS OF THE DAY.

*Under rule 10 of Hilary Term, 2 W. 4, a plaintiff admitted to sue in forma pauperis, and making default in not going to trial after a regular notice, is liable to the costs of the day, although the default be occasioned by the mistake of his attorney's clerk.*

THE plaintiff in this action had by an order bearing date the 29th of January, 1846, been admitted to sue in *forma pauperis*, and the cause was set down for trial, pursuant to a previous regular notice, at the sittings for Middlesex after last Hilary Term. It appeared, however, upon affidavit, that the clerk to the plaintiff's attorney had by mistake made an error in filling up the jury process, in consequence of which he failed to enter the cause in proper time with the marshal, and the trial therefore did not take place in accordance with the notice. A rule *nisi* having been obtained calling upon the plaintiff to pay the costs of the day for not proceeding to trial, pursuant to his notice, under the authority of the Rules of Hilary Term, 2 W. 4, rule 10,

Dowling, Serjeant, now showed cause. The rule of Hilary Term rendering a person who sues in *forma pauperis* liable to costs for default in not proceeding to trial after notice, though not dispaupered, does not apply to a case like the present, where the default has proceeded not vexatiously, but from unavoidable carelessness. The cases of *Doe d Lindsay v. Edwards and others*, 2 Dowl. 471, and *Gore v. Morphew*, 8 Dowl. 137, support this distinction.

Channell, Serjeant, contra. The rule of Hilary Term was framed to meet a case like the present, which before that rule could not have arisen until the plaintiff had been dispaupered. A pauper now is in exactly the same situation as any other plaintiff, and bound in the same manner to pay the costs of the day for his fault in not proceeding to trial, although it may be wholly the result of his attorney's neglect. *Gore v. Morphew*, 8 Dowl. 137.

\* The stat. 13 Geo. 2, c. 18, s. 5, enacts, that "no writ of certiorari shall be granted," &c.; "to remove any conviction, judgment, order, or other proceedings," by or before any justice or justices of the peace," &c.; "unless such certiorari be moved or applied for within six calendar months next after such conviction, judgment, order, or other proceedings, shall be so had or made," &c.



*By the Court.* Here notice of trial has been given in the regular and ordinary way, and in pursuance of that notice the defendant has necessarily incurred certain expenses. In consequence of a very gross error the trial of the cause did not take place, and therefore the plaintiff has incurred a liability to pay the costs of the day, and this although the error was occasioned by the mistake of his attorney's clerk. The rule therefore must be made absolute.

Rule absolute.

### Exchequer.

*Walstab v. Spottiswoode.* Trinity Term, 12th June, 1846.

#### RAILWAY SCHEME. — COMMITTEE-MAN. — RECOVERY OF DEPOSIT.

*An allottee of shares in a railway scheme which has proved abortive, may recover back, in an action for money had and received, the whole amount paid by way of deposit.*

THE first count of the declaration in substance stated, that the defendant and other persons agreed to form a joint stock company called the "Direct Birmingham, Oxford, Reading, and Brighton Junction Railway Company," for the purpose of making a railway under the powers of an act of parliament, capital 2,000,000*l.*, in 80,000 shares of 25*l.* each; that the committee of management allotted to the plaintiff 30 shares, and thereupon, in consideration of the premises, and that the plaintiff would, on or before October, pay into the bankers of the company a deposit of 2*l.* 12*s.* 6*d.* a share and execute the parliamentary contract and subscribers' agreement, &c., the defendant promised the plaintiff to give her in exchange for the letter of allotment, scrip certificates for the said shares. The declaration then alleged that the plaintiff paid the deposits into the banker's, and was always ready and willing to execute the parliamentary contract and subscribers' agreement, but that the defendant discharged the plaintiff from so doing; yet the defendant, not regarding his promise, refused to deliver the scrip certificates. The second count was for money had and received to the plaintiff's use. The defendant pleaded to the whole *non assumpsit*, and also traversed the material allegations in the first count.

At the trial before *Follock*, C. B., at Guildhall, it appeared that the defendant was one of the provisional committee of a railway scheme (called the "Direct Birmingham, Oxford, Reading, and Brighton Junction Railway Company,") which had been provisionally registered under the 7 & 8 Vict. c. 110. On the 7th October, 1845, the plaintiff wrote for shares, and on the 18th received a letter stating, "that the committee of management had allotted to her thirty shares in the proposed undertaking; and requesting that the plaintiff would pay the deposit of 2*l.* 12*s.* 6*d.* per share into one of the bankers mentioned on or before the 24th October, otherwise the letter of allotment would be null and void. It also stated that the

letter of allotment with the banker's receipt for the deposits appended thereto would be exchanged for scrip on its production at the office of the company, and on the plaintiff executing the parliamentary contract and subscribers' agreement. The plaintiff paid the deposit in due time into one of the bankers mentioned, and afterwards attended at the office of the company for the purpose of executing the necessary deeds. On the 27th October the plaintiff applied for scrip, but it was not given, and after many fruitless applications, she was told by the secretary, on the 12th November, that the directors had finally determined not to issue any scrip, and that a statement of the accounts would be made out, and the surplus, after paying the expenses incurred, would be refunded to the allottees. It appeared that 400,000 shares had been applied for, and 70,000 allotted, but deposits had been paid on 4,000 only. The learned judge directed the jury to find a verdict for the plaintiff, and reserved liberty for the defendant to move to enter a nonsuit. A rule nisi having been obtained accordingly,

*Jervis* and *Willis* showed cause. The first objection was, that the letter of allotment is no part of the contract; the answer to which is, that though the directors did not allot the number of shares which the plaintiff applied for, there is clearly a binding contract in respect of those allotted. The second objection was, that the company being only provisionally registered, had no power to issue scrip; but if the 23rd section of the 7 & 8 Vict. c. 110, is read in connexion with the 24th, it is clear that the power exists, for the latter section imposes a penalty on persons issuing scrip before provisional registration. That view is confirmed by the provision of the 51st and 52nd sections. At all events the plaintiff is entitled to recover on the count for money had and received. The case of *Nockells v. Crosby*, 3 B. & C. 814, is directly in point. Until the company is formed, the subscribers are not liable for any of the preliminary expenses, as they only contract to become partners in the event of the company being instituted. The 2*l.* 12*s.* 6*d.* per share consists of the deposit by way of earnest of 10*s.* in the hundred pounds, in pursuance of the 23rd section of the 7 & 8 Vict., and the ten per cent. required by the standing orders of the House of Commons. The latter sum the plaintiff is clearly entitled to recover, as the company is abandoned, and the authorities show that the preliminary expenses must be borne by the projectors. *Pitchford v. Daris*, 5 M. & W. 2; *Fox v. Clifton*, 9 Bing. 115.

*Martin*, in support of the rule. The subscribers to an undertaking like the present are quasi partners, and liable to contribute to the preliminary expenses. The contrary doctrine has principally rested on the case of *Kempson v. Saunders*, 4 Bing. 5; but that case, though never expressly overruled, has generally been considered as bad law. *Nockells v. Crosby* is distinguishable from this case, for there it was expressly agreed that the money paid as deposit should be put out at interest for the bene-

fit of the subscribers. Here some preliminary expenses must necessarily be incurred. There is no valid distinction in this respect between the different portions of the deposit: the 2s. 6d. will stand on the same footing as the ten per cent. It is clear from the provisions of the 7 & 8 Vict. c. 110, that the secretary had no power to issue scrip. As to the first count, the contract there stated is not proved, for the letter was a mere intimation that the banker's receipt would be exchanged for scrip. Besides there is no evidence that the scheme has been abandoned.

*Cur. adv. vult.*

*Pollock, C. B.*, delivered the judgment of the court. (After stating the facts, his lordship proceeded.) We think the decision in the case of *Nockells v. Crosby*, 3 B. & C. 814, governs this case. It is therefore unnecessary to give any opinion upon the special count, as to which some doubt may be well entertained, for we are all of opinion that the plaintiff is entitled to recover upon the count "for money had and received," and that the verdict found for her on that count should stand; but that the verdict on the other count should be set aside, and a verdict entered for the defendant. With regard to the point that the subscribers to an undertaking like the present are *quasi* partners, and that the subscription is to a common fund for the purpose of defraying the preliminary expenses of the company, we think that such is not the true result of the publication of the prospectus, or the application for shares, and we think that no partnership ever actually commenced. *Pitchford v. Darts*, 5 M. & W. 2, decided that a subscriber who had taken shares and paid deposits is not liable for the contracts of the directors, unless he knew and assented to them, proceeding with a smaller amount of capital. That has been since frequently acted on in other cases. In *Nockells v. Crosby* a similar doctrine was laid down. It appears to us that the application for shares and payment of deposits amounts to nothing; the shares subscribed for are so few that the concern could not proceed, and the scheme must necessarily be abortive. With respect to the other point, it is an answer to say that the allotment of shares in an abortive scheme is really not a compliance with the application. If the scheme ceases, nothing whatever is allotted. It was argued on the part of the defendant, that there was no evidence of the concern being at an end. We think the answer given at the office of the company to the inquiries of the plaintiff was evidence to go to the jury that the concern was abandoned, and being unanswered by evidence on the part of the defendant, we think that the jury were warranted in finding that the scheme was at an end. Upon the authority of *Nockells v. Crosby* we think the plaintiff entitled to recover on the count for money had and received. A question was raised, but not much argued, as to whether there was any difference between one portion of the deposit and the other; it appearing clear that 2s. 6d. was the deposit by way of

earnest of 10s. in the hundred on 25l., in pursuance of the 23rd section of the 7 & 8 Vict. c. 110, and that the residus of the deposit was the ten per cent. required by the standing orders of the House of Commons. Beyond all doubt that amount must be returned to the plaintiff, and we think that the other must also be paid back, on the ground that it was paid for the special purposes of a concern which has been abandoned, and therefore the money could not be applied to those purposes. The judgments of *Holroyd, J.*, and *Littledale, J.*, in *Nickolls v. Crosby*, will apply here. *Holroyd, J.*, says:—"It appeared to me at first that this was very like the case of a partnership which I put during the argument, but here the concern was never really set a going; and I think that the expenses incurred in setting a scheme on foot are not to be paid out of the concern unless they are adopted when it is in actual operation." And *Littledale, J.*, says:—"Suppose there had been no subscribers, then the projectors must have paid all the expenses. If then one person only subscribes, are all those expenses to be cast upon him? The hardship and injustice would be monstrous; yet that would be the consequence in such a case were we now to hold that the plaintiff was liable to a proportion of the expenses incurred by these defendants. With respect to the proposed partnership, it is plain that there could be none until the money was laid out in execution of the proposed scheme." Upon these grounds we think that the verdict ought to be entered for the defendant on the first, and that it ought to stand for the plaintiff on the other count.

## BUSINESS OF THE COURTS.

### Common Pleas.

This Court will, on Monday the 6th day of July next, hold a Sitting, and will proceed to give judgment in certain of the matters standing over for the consideration of the court.

## CHANCERY SITTINGS.

After Trinity Term, 1846.

### Lord Chancellor.

AT LINCOLN'S INN.

Monday	June 22	} The 1st Seal—Appeal Motions.
Tuesday	23	
Wednesday	24	
Thursday	25	
Friday	26	} (Petition-day) Unopposed Petitions and Appeals
Saturday	27	
Monday	29	} The 2nd Seal—Appeal Motions.
Tuesday	30	
Wednesday	July 1	
Thursday	2	
Friday	3	} (Petition-day) Unopposed Petitions and Appeals.
Saturday	4	

Monday . . . . .	6	{ The 3rd Seal—Appeal Motions.
Tuesday . . . . .	7	{ Appeals.
Wednesday . . . . .	8	
Thursday . . . . .	9	
Friday . . . . .	10	{ (Petition-day) Unopposed Petitions and Appeals.
Saturday . . . . .	11	{ Appeals.
Monday . . . . .	13	
Tuesday . . . . .	14	
Wednesday . . . . .	15	
Thursday . . . . .	16	
Friday . . . . .	17	{ (Petition-day) Unopposed Petitions and Appeals.
Saturday . . . . .	18	{ Appeals.
Monday . . . . .	20	
Tuesday . . . . .	21	
Wednesday . . . . .	22	
Thursday . . . . .	23	{ The 4th Seal—Motions and Causes.
Friday . . . . .	24	The General Petition-day.

N. B.—Such days as his Lordship is occupied in the House of Lords excepted.

#### Master of the Rolls.

Monday . . . . .	June 22	Motions.
Tuesday . . . . .	23	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Wednesday . . . . .	24	
Thursday . . . . .	25	
Friday . . . . .	26	
Saturday . . . . .	27	
Monday . . . . .	29	Motions.
Tuesday . . . . .	30	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Wednesday . . . . .	July 1	
Thursday . . . . .	9	
Friday . . . . .	8	
Saturday . . . . .	4	
Monday . . . . .	6	Motions.
Tuesday . . . . .	7	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . . .	8	
Thursday . . . . .	9	
Friday . . . . .	10	
Saturday . . . . .	11	
Monday . . . . .	13	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . . .	14	
Wednesday . . . . .	15	
Thursday . . . . .	16	
Friday . . . . .	17	
Saturday . . . . .	18	{ Motions.
Monday . . . . .	20	
Tuesday . . . . .	21	
Wednesday . . . . .	22	
Thursday . . . . .	23	
Friday . . . . .	24	Petitions in General Paper.

Short Causes, Consent Causes, and Consent Petitions, every Saturday at the sitting of the court.

Notice.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

#### Vice-Chancellor of England.

Monday . . . . .	June 22	The 1st Seal—Motions.
Tuesday . . . . .	23	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . . .	24	
Thursday . . . . .	25	

Friday . . . . .	26	{ (Petition-day) Petitions, (Unopposed first) Short Causes and Causes.
Saturday . . . . .	27	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday . . . . .	29	The 2nd Seal—Motions.
Tuesday . . . . .	30	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . . .	July 1	
Thursday . . . . .	2	
Friday . . . . .	3	{ (Petition-day) Petitions, (Unopposed first), Short Causes, and Causes.
Saturday . . . . .	4	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday . . . . .	6	The 3rd Seal—Motions.
Tuesday . . . . .	7	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . . .	8	
Thursday . . . . .	9	
Friday . . . . .	10	{ (Petition-day) Petitions, (Unopposed first), Short Causes, and Causes.
Saturday . . . . .	11	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday . . . . .	13	
Tuesday . . . . .	14	
Wednesday . . . . .	15	
Thursday . . . . .	16	{ (Petition-day) Short Causes, Petitions, and Causes.
Friday . . . . .	17	
Saturday . . . . .	18	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday . . . . .	20	
Tuesday . . . . .	21	
Wednesday . . . . .	22	{ The 4th Seal—Motions.
Thursday . . . . .	23	
Friday . . . . .	24	{ The General Petition-day—Petitions & Short Causes.

#### Vice-Chancellor Knight Bruce.

Monday . . . . .	June 22	The 1st Seal—Motions.
Tuesday . . . . .	23	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . . .	24	
Thursday . . . . .	25	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday . . . . .	26	{ (Petition-day) Petitions and Causes.
Friday . . . . .	27	Short Causes and Causes.
Monday . . . . .	29	The 2nd Seal—Motions and Causes.
Thursday . . . . .	30	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . . .	July 1	{ Bankrupt Petitions and Ditto.
Thursday . . . . .	2	{ Pleas, Demurrers, Exceptions, Causes, & Further Directions.
Friday . . . . .	3	{ (Petition-day) Petitions and Causes.
Saturday . . . . .	4	Short Causes and Causes.
Monday . . . . .	6	The 3rd Seal—Motions and Causes.

Tuesday . . . 7	{ Pleas, Demurrers, Exceptions, Causes, & Further Directions.
Wednesday . . . 8	{ Bankrupt Petitions and Ditto.
Thursday . . . 9	{ Pleas, Demurrers, Exceptions, Causes, & Further Directions.
Friday . . . 10	{ (Petition-day) Petitions and Causes.
Saturday . . . 11	{ Short Causes and Causes.
Monday . . . July 13	{ Bankrupt Petitions and Ditto.
Tuesday . . . 14	{ Pleas, Demurrers, Exceptions, Causes, & Further Directions.
Wednesday . . . 15	{ Bankrupt Petitions and Ditto.
Thursday . . . 16	{ Pleas, Demurrers, Exceptions, Causes, & Further Directions.
Friday . . . 17	{ (Petition-day) Petitions and Causes.
Saturday . . . 18	{ Short Causes and Causes.
Monday . . . 20	{ Bankrupt Petitions and Causes.
Tuesday . . . 21	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . 22	{ Bankrupt Petitions and Ditto.
Thursday . . . 23	{ The 4th Seal—Motions.
Friday . . . 24	{ (Petition-day) Petitions & Causes.
Saturday . . . 25	{ Short Causes, Petitions and Causes.
Monday . . . 27	{ Bankrupt Petitions and Causes.
Tuesday . . . 28	{ Petitions and Causes.
Wednesday . . . 29	{ Petitions and Causes.
Thursday . . . 30	{ Short Causes and Causes.
Friday . . . Aug. 1	{ Bankrupt Petitions.

Vice-Chancellor's Sittings.

Monday . . . June 22	{ The 1st Seal—Motions & Causes.
Tuesday . . . 23	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . 24	{ Bankrupt Petitions and Ditto.
Thursday . . . 25	{ The 4th Seal—Motions.
Friday . . . 26	{ (Petition-day) Ditto.
Saturday . . . 27	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 29	{ The 2nd Seal—Motions and Causes.
Tuesday . . . 30	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . . July 1	{ Ditto.
Thursday . . . 2	{ (Petition-day,) Ditto.
Friday . . . 3	{ Short Causes, Petitions, (unopposed first,) and Causes.
Saturday . . . 4	{ The 3rd Seal—Motions and Causes.
Monday . . . 6	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . . 7	{ Ditto.
Wednesday . . . 8	{ Bankrupt Petitions and Causes.
Thursday . . . 9	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Friday . . . 10	{ (Petition-day) Ditto.
Saturday . . . 11	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 13	{ Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Tuesday . . . 14	{ Ditto.
Wednesday . . . 15	{ Ditto.
Thursday . . . 16	{ (Petition-day) Ditto.
Friday . . . 17	{ Short Causes, Petitions, (unopposed first,) and Causes.
Saturday . . . 18	{ Pleas, Demurrers, Exceptions, Further Dir. and Causes.
Monday . . . 20	{ The 4th Seal—Motions and Causes.
Tuesday . . . 21	{ (Petition-day) Petitions & Causes.
Wednesday . . . 22	{ Short Causes, Petitions & Causes.
Thursday . . . 23	{ (Petition-day) Petitions & Causes.
Friday . . . 24	{ Short Causes, Petitions & Causes.
Saturday . . . 25	{ Short Causes, Petitions & Causes.

SMALL DEBTS BILL.

The government bill of 133 clauses has just been printed. It proposes to enlarge the county and other local courts to £200, with power to remove actions above 5*l.* to a superior court under a judge's order, on terms of giving security, &c., with concurrent jurisdiction to the courts of Westminster, when the plaintiff dwells more than 20 miles from the defendant.

NOTES OF THE WEEK.

UNQUALIFIED PRACTITIONERS AT THE SESSIONS.

In the case of the *Queen v. Buchanan*, reported at p. 155, *ante*, in which it was decided, that it is an indictable offence to practise as an attorney without being duly qualified, the defendant attended the Court of Queen's Bench on the 11th instant. The Attorney-General consented to the defendant's entering into his own recognizance to come up for judgment when called upon:—the defendant paying the costs.

The improper practising at the sessions by the clerks of guardians who are not qualified to act as attorneys, will thus, we presume, be terminated.

LECTURES AT THE INNER TEMPLE.

Mr. Starkie, Q. C., concluded the series of lectures on Jurisprudence, delivered by him in the Hall of the Inner Temple in his capacity of *Lector* of that society, on Thursday evening last; but the learned gentleman at the same time announced, that it was his intention to resume the subject in the ensuing Michaelmas Term, when it is to be hoped there may be an increased attendance of students.

CHIEF CLERK TO A MASTER IN CHANCERY.

The question about the chief clerk to Master Lynch has been settled by the appointment of

Mr. James William Barrett, a solicitor duly qualified under the Chancery Regulation Act. This gentleman is a member of a very respectable firm in Gray's Inn, from which of course he will withdraw on taking his seat.

#### SOLICITOR OF EXCISE.

We understand that J. Douglas, Esq., Barrister-at-Law, of the Middle Temple, has been appointed to the office of Solicitor of Excise, jointly with Andrew Morton Carr, Esq., of Gray's Inn, recently Solicitor of Excise for Scotland.

A multitude of appointments can only be filled by barristers, and we think it would be both politic and just to give these Government solicitorships to the other branch of the profession.

### PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

#### House of Lords.

##### NEW BILLS.

Recovery of Small Debts and Demands in England.—For 2nd reading. The Lord President of the Council.

Juvenile Offenders. For 2nd reading. Marquis of Westminster.

Real Property Conveyance.—For 3rd reading. See the bill pp. 50, 70, *ante*. Lord Brougham.

General Registration of Deeds. — Lord Campbell. Deferred until the Corn Bill has passed.

Religious Opinions Relief.—Re-committed. Lord Chancellor.

Punishment for deterring Prosecutors, Witnesses, &c.—In Committee. See the bill, 31 L. O. 472. Lord Denman.

Metropolitan Buildings.—For 2nd reading. See the bill, 31 L. O. 426.

Railway Companies Dissolution.—For 3rd reading. Lord Dalhousie.

Railway Deposits.—In Committee.

Insolvent Debtors' Act Amendment.—For 3rd reading. Lord Brougham.

Commons Inclosure. For 3rd reading.

Vexatious Actions Protection. — For 2nd reading.

Game Laws.—To be reported.

Small Debt Courts:

St. Austell. In Committee.

Birkenhead. In Committee.

Friendly Societies.—Passed.

#### House of Commons.

##### NEW BILLS.

Administration of Criminal Justice. Passed. Bankruptcy and Insolvency.—For 2nd reading. 24th June. See the bill, 31 L. O. 569. Mr. Hawes.

Roman Catholics' Relief. — Re-committed. See the bill, p. 402, *ante*. Mr. Watson.

Small Debts Court:

Somerset. 2nd reading, 26th June.

Northampton.

Poor Removal. — Re-committed. Sir J. Graham. See analysis of the bill, 31 L. O. 473.

Highway Laws Amendment.—For 2nd reading. Sir James Graham.

Corresponding Societies, Lectures, &c. Mr. T. S. Duncombe.

Metropolis Interments. Mr. Mackintosh.

Death by Accidents Compensation. For 2nd reading.

Deodands Abolition. Mr. Bouverie.

Total Abolition of the Punishment of Death. Mr. Ewart.

County Rates. For 2nd reading.

Administration of Justice. For 2nd reading. Mr. Frewen.

### THE EDITOR'S LETTER BOX.

THE Table of Contents of the last volume gives the references to the several sections of the *Analytical Digest of Cases* reported in all the courts, and included in that volume, under the heads of Courts of Equity, Courts of Common Law, Ecclesiastical Courts, and Appeals. In the present volume the sections already given are,—Court of Review and Bankruptcy Courts, p. 29; House of Lords, p. 77; Criminal Law, p. 79; Common Law Courts:—Construction of Statutes, p. 122; Principles of the Common Law and Grounds of Action, p. 194; Pleadings, p. 171. The Cases on Practice will follow next week.

Some communications bearing on the examination of candidates for the Roll of Attorneys, will be found hereafter under the new head of articles called "The Law Student." The list of candidates passed last term shall appear soon.

We are sorry for the case of "Infelix," but do not see how the Law Institution or any other society can assist him. The truth is, that there are far too many both of masters and clerks in the profession. His perseverance, however, we hope, will finally prove successful. Constant diligence, industry, and economy, can scarcely fail of attaining their reward.

We hope to find space for a full report of the Annual Meeting of the *United Law Clerks Society* in our next number.

C. A. inquires whether a man taking a lease of premises on three lives absolute, for the purpose of having a county vote, can on the death of two, still retain his vote during the life of the survivor.

# The Legal Observer.

SATURDAY, JUNE 27, 1846.

— "Quod' magis ad nos  
Pertinet, et necire malum est, agitamur."

HORAT.

## PROGRESS OF LAW REFORM.

THE fortunately slow progress of the projected alterations in the law during the present session, has rendered it unnecessary on our part to occupy much of the attention of our readers in the discussion, either of the principle or details of the changes proposed. It may, however, be expected, that we should take a general review of the more prominent measures before parliament, which are at all likely to be pressed forward after the Corn Bill shall have passed.

1st, We may notice the *Small Debts Bill*, just brought in by government, and which is designed to carry out the objects of the hasty and imperfect act of the last session. We must repeat our protest on the part of the profession (and we might add of the public) against this irregular method of legislation. In the session of 1844, all arrests in execution under 20*l.* were abolished. In 1845, this abolition was found to be productive of grievous evils, and another act was passed for better securing small debts, and on this was grafted (just at the close of the session) a power to enlarge all the local courts throughout the country to 20*l.*, but no adequate machinery was provided for working the act. Now, in 1846, comes a bill to carry out in detail the principle thus hastily enacted.

True it is, that this bill is less objectionable than any which has yet been introduced on the subject. The mitigating clauses are—First, A power to remove actions above 5*l.* to one of the superior courts under a judge's order, upon such terms as to payment of costs; giving security for debts or costs, or such other terms as the judge shall think fit.—

Secondly, Concurrent jurisdiction is reserved to the superior courts, where the plaintiff dwells more than 20 miles from the defendant, or where the cause of action did not arise wholly or in some material point within the jurisdiction of the court within which the defendant resides or carries on his business.

Notwithstanding these modifications, we think the measure will still inflict serious injury on the public, by impairing the due administration of justice, lowering the character and station of professional men, and effecting no advantage in return,—except the increase of government patronage. The "wedge" having been fixed last year into the old tree of Westminster Hall, we apprehend that its remorseless enemies will, in the coming autumn, drive it farther, and if nothing worse happen a large and important limb will be severed from the main trunk.\* From this obnoxious measure we pass,

2ndly, to the *Short-Form Deeds Bill*, which has passed the House of Lords, with its schedules of nearly 100 folio pages, closely printed, comprising forms for all kinds of conveyances, settlements, wills, mortgages, leases, &c. &c.

We claimed last week further time to consider this new and elaborate bill, and adverted to the advice given to Lord Brougham by the *Law Review*, (as the organ of "The Law Amendment Society,") stating what we deemed to be the effect of our contemporary's recommendation; but it is proper we should quote the *Law Review* itself. "While on the one hand," says the writer in that work, "we would entreat Lord Brougham to listen to all fair

\* We shall print the bill in our next number.

and candid objections, we would hope that his lordship will pay no attention whatever to any attempt to defeat the bill which takes the form of *asking for time*;<sup>b</sup> and afterwards, (says the writer,) "we hope that the bill will receive the fullest investigation."

Now we venture again to press for an enlargement of the time to consider the effect of the very extensive alterations which are here proposed in the Law and Practice of Conveyancing. We are not prepared at this the most busy of all seasons of the legal year, to enter sufficiently into a due consideration of all the grounds on which the measure is proposed,—the consequences which may result from it,—or the details by which it is proposed to effect its objects. And we protest against its being assumed that in "asking for time," we are "attempting to defeat the bill," unless (which is possible) that full investigation may terminate in its just overthrow.

It is remarkable in reference to the objects of this bill, that the select committee of the House of Lords, in their report on the Burdens on Real Property, wherein they advert to the evil of long deeds, and the necessity of a revision of the whole subject of conveyancing, "limit themselves to the expression of their opinion, that a Registry of Titles to all real property is essential to the success of any attempt to simplify the system of conveyancing." This being so, we are next brought,

3rdly, To the plan for a *general Registration of Deeds*, the bill for which Lord Campbell suspended only until the Corn Bill shall have passed. At the next stage of this Metropolitan Registry measure, we shall have many objections to add to those we have already stated. We shall also call the attention of our readers, to the important observations of Sir Edward Sugden and other opponents of the scheme.<sup>b</sup>

If it be intended, as the Law Amendment Society asserts, to proceed in all

these changes with caution and deliberation, then we recommend the promoters of a general registry, first, to improve the *Middlesex* and *Yorkshire* registries, and after the experience of a few years shall have satisfied the public of their utility when so improved, then will be the time to extend the plan to other counties. We remember when Lord Brougham, in 1830, first proposed his scheme of local judicature, he intended to limit the experiment to two counties. This was a precaution scarcely to be expected from the impetuous energy with which his Lordship usually pursues his objects. We trust that Lord Campbell, who from nature and habit is opposed to rash and ill-considered measures, will avail himself of the favourable opportunity afforded of reforming and amending the existing establishments, which we assure him, (whatever may become of the general plan,) very much requires amendment. We came now to the subject of

4thly, *Bankruptcy and Insolvency*. There appears to be no end of the projects in this department of legal reform. Besides the bill of Mr. Hawes in the House of Commons, just read a second time, Lord Brougham has two bills—one recently passed the Lords, of which we gave an abstract at p. 164, ante; the other brought in the 19th June, to authorise the commissioners to suspend the protection of a bankrupt or insolvent, and to constitute assignees into judgment creditors, enabling them to issue execution and seize property. These provisions partly resemble some of those in Mr. Hawes's bill, and seem to be properly aimed at the correction of some recent statutes under which the balance of advantage was infinitely in favour of the debtor, and the interest of the creditor deemed of light account. Next we may notice,

5thly, The *Poor Removal* bill and the *Highway Laws* amendment bill, both of which are highly important alike to the public and the profession. In the amended *Poor Removal* bill the clause has been expunged relating to the appointment of paid officers to conduct the proceedings, (evidently not to be professional men); and we are sure that the parishes themselves will be benefited by leaving the law in its present state, by which unqualified persons are prohibited from practising before the quarter sessions.

There are several bills for the amendment of the criminal law, and other objects, which are enumerated in our weekly list of parliamentary proceedings.

<sup>b</sup> As a sample of the way in which a public registry would be abused, we may refer to the recent practice in the newspapers of setting forth the wills of private persons, publishing the amount of the property they have left, and subjecting to discussion the propriety of their bequests and legacies and their various testamentary directions, without knowing the reasons on which they are founded or the purposes they are intended to effect. Hereafter the "evil eye" will not permit us to do "what we will with our own."

## NOTES ON EQUITY.

### CONTEMPT.—PASSIVE RESISTANCE.

It is the general rule that a party in contempt cannot make any application to the court; or at all events, cannot induce the court to listen to his complaint until he has first cleared his contempt.

But the rule only applies to proceedings in the particular cause, and it of course is not to be understood to prevent the contemnor from applying for a discharge of the order itself, for disobedience to which the contempt has been incurred. In such a case the party in contempt may, on the ground of irregularity, apply for a discharge of the order and may, and frequently does, succeed in obtaining it.

There is another, and an important qualification of the general rule, that to a party in contempt the ear of the court is generally closed. The rule really means, that he cannot proceed *actively* against his opponent; but it does not prevent him from defending himself against adverse proceedings taken on the other side. Were not the rule so restricted, it would operate injustice; for otherwise a man unable to pay costs might have his rights concluded without his having the power to utter a word in their defence. The distinction is well put by Lord Cottenham in *King v. Bryant*,<sup>a</sup> where his lordship observed, that "the court will not hear a party in contempt coming into court to take any advantage of proceedings in the cause;—but such a party is entitled to appear notwithstanding, and resist any proceedings taken against him."

In a late case before Vice-Chancellor Wigram,<sup>b</sup> the Master having made his report, and the order *nisi* to confirm the same having been served on one of the defendants who was in contempt for non-payment of certain costs, he took exceptions to the report—and these having been set down in pursuance of the usual order, the plaintiffs moved that they might be taken off the file on the ground of the contempt. The Vice-Chancellor held, that the step taken by the defendant in filing the exceptions was purely in the way of resistance, and was therefore permissible by the practice of the court.

A contempt is an offence against the court. The guilt always involves some

disrespect, real or supposed, to the tribunal. Such, at all events, is the strict technical view on which parties in contempt are held punishable. This view, however, is not very rigidly attended to in modern practice, as appears by the decision of Vice-Chancellor Wigram, *Terrell v. Souch*,<sup>c</sup> where upon an affidavit that the sole plaintiff in the cause had died some months before, it was moved that the defendant, who was in prison for contempt, should be discharged. And his Honour made an order accordingly. It is true in this case the suit had become abated by the death of the plaintiff; but still, if the contempt were considered real, the defendant would not have been discharged. The contempt, however, was but a fiction of law, and as such was dealt with by the court.

### NOTICES OF NEW BOOKS.

*The Equitable Jurisdiction of the Court of Chancery; comprising its Rise, Progress, and Final Establishment, to which is prefixed a Concise Account of the Leading Doctrines of the Common Law and Course of Procedure, with an attempt to trace them to their Sources, and the various Alterations made by the Legislature, &c.* By GEORGE SPENCE, Esq. Q. C. In 2 vols. Vol. 1. Pp. 748, lx. Stevens & Norton. 1846.

THE law books of the present age, in all their vast variety, may be classed under the following heads:—The practical, the elementary, and the scientific.

1. The practical treatises form the far larger class. They are intended for daily use in the chambers of counsel, and the offices of the attorney and solicitor. These treatises, for the most part, consist of a full statement of the statutes and decisions which bear upon the several subjects comprehended in the work. The author adapts himself to the wants of the practitioner who desires to have the fullest information of the existing state of the law, and rarely cares anything about its origin or progress. If the law be entirely of statutory creation, he inquires not into the reasons or policy on which it was founded. If it be of common law origin, it is enough for him that the doctrines are recognized in recent text books and modern reports. The mode of procedure which depends on the general orders and the particular decisions of the

<sup>a</sup> 3 Myl. & C. 195.

<sup>b</sup> *Morrison v. Morrison*, 4 Hare, 590.

<sup>c</sup> 4 Hare, 535.



several courts, he is content to find laid down in the received books of practice. He has generally neither time nor inclination to do more than master the knowledge requisite for the business of the day.

2. The elementary and scientific works on the law are comparatively few in number. The paucity of this class may be partly, if not mainly, accounted for by the ready access which is given to the higher branch of the profession, without undergoing any course whatever, either of study or examination. The necessity which within a few years has arisen for some preparatory reading, and the attainment of some degree of knowledge, tested by a moderate examination into "the fitness and capacity" of candidates for the larger branch of the profession, has doubtless occasioned some recent endeavours (which have been partly successful) to supply the deficiency in our elementary and scientific treatises; but we cannot assert that much has yet been accomplished.

In this state of things, and especially in reference to the projected improvements in legal education at the inns of court, we cordially hail the appearance of Mr. Spence's work on the Court of Chancery, which is undoubtedly a very valuable contribution to our stock of legal literature. It displays an eminent degree of learning — much laborious research, — and very sound and accurate judgment.

The learned author states, in general terms, that his object in the publication of this volume has been "to trace the outlines of the history of the laws of England, so far as they relate to property, and to set forth in a short compass their leading principles." He adds that "one great end and aim he has in view is to explain how it has arisen that those laws are administered by distinct tribunals, the Courts of Common Law and the Court of Chancery; and to point out, as far as it can be done, the boundary lines between their respective jurisdictions." In order to accomplish this purpose, Mr. Spence has gone back to the period of the first authentic records of civil jurisprudence in this island, namely, the introduction of the Roman laws and institutions.

"I have then (he says) entered into an examination of the laws which were established by the Anglo-Saxons and Danes, on their respective conquests, as they are to be found in their codes; endeavouring at the same time, by reference to the histories and chronicles of the times, including where it seemed to be material those of

the continent of Europe, to interpret those codes by reference to the state of society at the time, and to the existing customs disclosed by those documents, as to which the codes are silent. And with a view to the more accurate conception of their nature, I have attempted to ascertain how much of those laws and customs may be considered as original or indigenous, or of native invention, how much as the result of imitation or adoption."

Mr. Spence has also brought under consideration the systems of judicial organization which have from time to time prevailed in England. Here he observes that—

"The inquiries which are embraced in this part of the work have necessarily led to an investigation into the feudal system. To what extent that system prevailed in England down to the period of the Norman Conquest is stated;—its rise is traced;—and the reasons and circumstances to which it owed its origin here, as well as on the continent of Europe so far as such an extension of the inquiry has been deemed necessary for the elucidation of its progress and establishment in England, and the sources from which it was derived, are endeavoured to be pointed out."

The views of the learned author in this part of his work are not strictly in accordance with those of Spelman, Hale, Blackstone, and others; but a patient examination of the chronicles and records of the times and a careful perusal of the Digest of Justinian and the Theodosian Code, with the Commentary of Gothofred, have forced upon him the conclusions which he has presented.

The second part of the work commences with the Norman Conquest; and in this portion of his labours Mr. Spence says—

"I have endeavoured, from the ample records of the times, aided by the works of modern historians, to present to the view of the reader the true nature of that conquest, and its effect upon the pre-existing laws and constitution of England; and then to trace the rise and establishment of the common law of England, and generally to point out its sources—ending with an account of the leading principles of common law and of the system of judicial procedure in the courts of common law, with reference to the rights of property. Having had occasion to make frequent reference to detached portions of the Roman law, I have thought it might be convenient here to introduce a short summary of the Institutes of Justinian as to persons, things, and obligations; so much as relates to actions will be found in the preceding part of the work.

"Here again, so far as regards the origin and sources of the common law, I have found myself occasionally in conflict with some of the most venerated of our ancient instructors and guides. I can assure the reader that I have not searched for novelties; it would have been

so largely conducive to my ease, and would so materially have accelerated the time when I could have offered that part of the present work to which all these inquiries are but preliminary, (though in my mind necessary), namely the history and the principles of the existing system of equitable jurisprudence which is administered in the Court of Chancery, that I should have gladly incorporated, or referred to, any work that might have afforded such a view of the origin and sources of the common law as I could have adopted; but this I did not find, even in the well known and valuable work of Mr. Reeves, from which, however, in other respects I have largely derived instruction and assistance."

Our author next proceeds to trace the rise, progress, and final establishment of the modern equitable jurisdiction of the Court of Chancery, and states—1st, The reasons which gave occasion for establishing a court having a distinct jurisdiction from that of the courts of common law. 2nd, The nature and extent of the powers of that court. 3rd, The principles upon which its jurisdiction was originally founded. 4th, The divisions into which that jurisdiction ultimately settled down, and thus exhibiting the leading features and principles of the modern jurisdiction of the Court of Chancery.

The concluding volume, a portion of which the author states he had completed before he found it necessary to enter upon the history of the court and its jurisdiction, will exhibit how those principles are applied at the present day, forming a practical view of the equitable jurisprudence administered in the Court of Chancery.

Mr. Spence anticipates and answers an objection which would very naturally occur to the reader of the present volume, namely, that in a work, the design of which is *mainly practical*, "too much of historical detail has been introduced." As some excuse for the course he has adopted, the author remarks that Lord Chief Baron Gilbert in his "*Forum Romanum*" has touched upon almost every topic on which Mr. Spence has enlarged, and each of them he conceives to be conducive to the true understanding of the main subject.

The present volume consists of Two Parts.—The first part is divided into two books, the 1st of which treats of the *Laws and Institutions of Britain under the Romans, Anglo-Saxons, and Danes*. This part is divided into the following chapters:

1. Roman conquest of Britain. The Anglo-Saxon conquest.
2. Distribution of the conquered lands.

3. Anglo-Saxon legislation—influence of the clergy.

4. The laws and customs of the Anglo-Saxons relating to property.

5. The royal domains.

6. The public domains—grants to the clergy.

7. The sources of the feudal system.

8. Origin of feudal vassalage.

9. Anglo-Saxon vassalage—lord and man.

10. Grants of lands to vassals.

11. The *ceorls* or *churls*.

12. Conditions of towns and their inhabitants. Municipal institutions.

13. The judicial institutions of the Anglo-Saxons.

14. The councils of the Anglo-Saxon kings.

15. General summary of the Anglo-Saxon system of jurisprudence, its nature and sources.

From this general summary we extract the following:—

"Looking back to the state of England as detailed in the preceding pages, the anticipation, hazarded at the outset, that the influence of the clergy would be exercised in introducing Roman institutions and laws, or in moulding the institutions and customs of the Anglo-Saxons according to Roman models, appears to be fully verified, whether we look to the political government, the civil jurisprudence, or the judicial establishments which prevailed in England under the Anglo-Saxon rule. Some, indeed, of the ancient German laws were embodied in their codes, being such no doubt as according to the temper of the people, still familiarized with acts of violence owing to their being engaged in a state of almost perpetual war, were considered to be best calculated to afford protection to persons and property from outrage and spoliation.

"On reviewing the state of the law, during the ages we have passed over, in reference to the subject of the subsequent part of this work, namely, the correction of the positive law and the supplying its deficiencies, we may observe that human sagacity, as we are taught by all experience, as regards legislators much more enlightened than those of the Anglo-Saxons, must fail in any attempt adequately to provide by anticipation for every possible state of circumstances. Accordingly, as we have seen, it was soon found necessary where the positive law required to be tempered or supplied, that the king, as the supreme governor, should be resorted to, to provide by his authority, personally, or under the advice of his council, a suitable remedy for the particular case, and in some cases to provide by enactment for future cases of a similar nature, where the circumstances would admit of such a measure being adopted. Numerous instances of such applications must have been perpetually occurring as regards the laws relating to personal injuries.

In regard to the rights of property, some laws and regulations, purely civil, were incorporated in the codes, but such rights mostly depended on custom, and might therefore readily be moulded as experience might re-

quire. As regards land in particular—the most valuable species of property—the circumstances of the times led to the introduction of a variety of customs relating to its enjoyment and disposition, some of which were sufficiently definite to become the subject of positive legislation; but most of them were left without the sanction of legislative enactment. The tribunals which were chiefly engaged in the decision of questions depending on such customs, namely, the provincial courts, were composed of members necessarily conversant with such customs, and who, not being tied down to any definite rules, could, if necessary, apply what might appear to them to be the principles of natural justice, to their adjudication: a resort to the king or his supreme tribunal, in regard to civil matters, would therefore be less frequent as to questions relating to property in land. It was much the same in regard to questions arising amongst the commercial portion of the community. There also the judges, who had to decide on litigated questions of this description, were composed of persons engaged in commerce and trade, cognizant of the customs which had grown up amongst them, or had been preserved from more enlightened times. In cases, whether arising before the county or municipal tribunals, to which no known or settled rules could be applied, there were always at hand, if they were not a constituent part of the court, some members of that influential body, the clergy, who were able to instruct the presidents and judges, to a considerable extent, in those principles of refined jurisprudence which the preceding lords of the country had with so much skill and intelligence reduced into a practical system. If the question involved a breach of faith, which appears to have been considered to be in its nature the subject of ecclesiastical cognizance, possibly a direct resort might be had to the ecclesiastical tribunals. These several courts were in effect, as regards all merely civil rights, courts of equity as well as courts of law. Such having been the state of England as regards its laws and institutions, that great and important event which we are now about to contemplate took place, namely, **THE NORMAN CONQUEST.**"

The second book treats of the Norman Conquest and its consequences as affecting the laws and institutions of England—comprising the origin and sources and leading principles of the common law of England.

1. The Norman Conquest—reign of William I.
2. Laws and institutions of England during the reigns of William II., Henry I., and Stephen.
3. Laws and institutions of England from the reign of Henry II. to that of Edward I. inclusive.
4. Summary of the doctrines of the common law of England relating to real property.
5. Property in things personal.
6. Laws relating to bankrupts and insolvents.

7. Roman mode of procedure in civil cases, by action, formula, and pleadings.

8. The English mode of proceeding in civil cases, by action, writ, and pleadings.

9. Actions of the case.

10. Limitation of actions and prescription.

11. The transition of the great council of parliament, from its early state under the Anglo-Norman sovereigns to its modern constitution—consideration of the present course of legislation in reference to the amendment of the law.

12. Retrospect and summary of the principal epochs in the history of the laws of England relating to property, as administered in the superior courts of common law, down to the present time—enumeration and short purport of the acts passed in the last and the present reign for the amendment of the law. The appendix to this part contains a short summary of the Roman law relating to civil rights.

The following note to the 11th chapter contains a statement with some observations on *modern legislation*, which cannot fail to be read with interest:—

"It is always treated as a maxim, that it is the *'first duty of the Government'* to provide for the due administration of justice.' Justice depends upon the law, and it would seem necessary that care should be taken that the law, on which justice in its practical application depends, is in as good a state as the advancement of knowledge, the state of society, and other circumstances will permit. The constant fluctuation of all human affairs,—the new sorts of transactions in which men from time to time engage, the new relations in which they stand to one another, make it absolutely necessary for their welfare, and even for the peace of society, that such corresponding changes as wisdom and experience may sanction should from time to time be made in the law;—according to the maxim above alluded to, this duty devolves upon the government.

"As regards the amendment of the laws relating to jurisprudence in its several branches, the Chancellor is the only member of the government who is competent to undertake such a task. But the other duties, political as well as judicial, which are imposed upon this high officer and which call for his immediate hourly attention, are of themselves so overwhelming, that we are not to wonder that what has been found most pressing has been attended to, and that the duties of the Chancellor as to the superintendence of the state of the law, and of its administration, has been generally pretermitted, for under the circumstances perhaps "neglected" would be too harsh a term.

"A review of what has passed within our own times will illustrate and confirm what is above advanced. Great alterations, which from their having obtained the sanction not only of the legislature but of the most distinguished members of the profession I may safely call *improvements*, have been made in almost every branch of the law, and in the mode of its ad-

ministration. But who have been the originators of these improvements? with one bright exception—private individuals;—some of them members of parliament, others not, but all of them, with the exception above alluded to, wholly unconnected with the government. Thus, the improvements which have lately been carried into effect in the law relating to *real property*, are mainly to be attributed to writings of the late Mr. Miller, Q. C., and Mr. Humphreys;—in the *criminal law*, to Sir Samuel Romilly, Sir James Mackintosh, and here the exception I have alluded to applies—Sir Robert Peel;—in the rules of *pleading and practice* in the superior courts of common law, and in the law relating to *charities*, to Lord, then Mr. Henry Brougham;—in the law relating to *bankruptcy*, to the late Mr. J. Smith, member for Midhurst;—in the *practice and constitution of the offices of the Court of Chancery*, to the late Mr. Michael Angelo Taylor, Mr. Justice Williams, then Mr. John Williams, the late Mr. Miller, Q. C., and Mr. Vizard.

"There was, indeed, a time which all who have attended to the subject, those particularly who have employed themselves in the task of endeavouring to amend the law, will remember, when the government was not content with being passive—when no change that could be resisted was allowed—when men of great power and influence really (as we are bound to assume) believed that our system of law was not only better than that which was enjoyed by any other country, but was as a whole, and in every part, better than anything else which the wit of man could suggest—when government and the law authorities, instead of watching the system with a view to improvement when safe and proper, watched it only for the purpose of its being kept in the state in which it then was.—That plan of resistance was for a time eminently successful; but the necessity and desire of change went on increasing, and (chiefly, as I have before observed, by the exertion of a few individuals,) at length prevailed. Still the government was without the power of itself to examine into the real defects in the law, and unprepared to propose any permanent remedy to supply its own inefficiency. The expedient was resorted to of appointing commissioners to inquire into the state of the law in its different branches, and to suggest remedies for ascertained grievances. From these commissioners reports have emanated, of the greatest value in themselves, but particularly so from having been accompanied by the evidence and written opinions and propositions which were laid before the commissioners. 'If,' says Lord Langdale, 'there had been a minister able to bestow his own time on the subject, to consult the judges and officers engaged in the administration of the law, and, after receiving their advice, to procure the proper bills to be prepared, and to explain to parliament the reasons of the proposed changes; that is, if the holder of the great seal had not been otherwise occupied, the country might, before this time, have derived infinite benefit from the reports of the commis-

sioners;" and it may be added, of the suggestions which were printed, together with the reports. 'But without a proper guide, the parliament proceeds from year to year blundering in legislation, accumulating one statute on another without system and without order; and the statutes themselves are often framed in such a manner as almost to defy interpretation; daily provoking observation in the courts of justice upon the carelessness and want of skill of the legislature.'

"Even these attempts to improve the science of jurisprudence by legislation (for the deficiencies in which the original framers of the acts are not always responsible), have been, for the most part, forced upon the notice of the government of the day, through the untiring perseverance of individuals on whom no such duty could be considered as in the slightest degree to have attached. On the subject of civil jurisprudence, the public at large, though of course it is *their* interests that are at stake, are at present wholly quiescent. As their Anglo-Saxon ancestors were content to be guided in all things relating to their property by the monks and priests, so the owners of property of the present day leave the laws as to the enjoyment, alienation, and transmission of their property, to be dealt with by the members of the legal profession alone. In such a state of things, those individuals who are anxious that the defects in the law, from whatever cause they may arise, should be amended, so that the laws of England should exhibit to our own country, to the other states of Europe, and to the inhabitants of the new world, a complete and rational system of jurisprudence, can hope to accomplish their object only by voluntary association, thus giving their united labours and experience to the proposing such improvements in the law, and its administration, as may be considered necessary or expedient,—until the time shall arrive when a minister shall have been appointed for securing an efficient and systematic course of legislation on the paramount subject of jurisprudence."

We have, for the present, confined ourselves to the first part of the volume. In an early number, if not in our next, we shall pursue the subject, the importance of which well deserves a second notice.

## ATTORNEYS' CERTIFICATE DUTY.

To the Editor of the Legal Observer.

SIR,—“Out of the abundance of the heart the mouth speaketh.” With this feeling, Sir, do I now take up my pen to address a few words to you on the above subject; and in addressing you I know I am addressing a friend.

I would ask then, what can be the object of the legislature in refusing to abrogate this unjust tax? It cannot be that its continuance is necessary for the national good, so long as other taxes are mitigated or repealed not press-

ing, perhaps, near so heavily on any one particular body of men or section of the community. But what are we to do? To the rich 8*l.* or 12*l.* a year may appear a trifling sum; but it is not a trifle to the majority of attorneys, who are not rich but poor, and according to present appearances may reasonably expect not to be otherwise.

I do think, sir, that the profession of an attorney and solicitor is not fairly dealt with. We appear to be left out of the pale of those for whose benefit the precious boons of our legislators are given, except now and then that we are thought of in the way of having some act or other almost like a penal statute passed against us, I mean some act by which our charges and profits may be pared down to the lowest possible pittance. Human nature I know is fallen, and our profession is one of confidence, and on that account may require some tribunal to inspect our conduct; but surely it cannot be the way to raise the character of the profession by measures tending to lower and depress its members.

Have we no friend in "court" or in "power?" Is there no champion to be found to fight our battle in parliament? Petitions are of little avail unless we have some one to support them.

A COUNTRY ATTORNEY AND SOLICITOR.

### SETTLEMENT OF THE POOR.

MR. EDITOR.—I was pleased to see your observations respecting the proposed alteration of the law respecting the settlement of the poor.

I suppose every one has his *nostrum* for this disease; and I will now trouble you with mine, which is, to *abolish the law of settlement* altogether.

I imagine that no law has given rise to so much litigation or acted more injuriously towards the poor than the law of settlement; and if so, the sooner it is abolished the better. Under the old system of poor relief this object could not well be effected; but under the present system it appears perfectly possible.

Let there be an equal assessment throughout the kingdom; and let the sums raised be formed into one common fund, to be dealt out through the medium of the different boards of guardians, according to the exigencies of each locality, and the business would be accomplished.

It may be said, that, in that case, some places would have to pay more, and others less, than at present. Very true, such may be the case. But ought not the maintenance of the poor to be a *national* rather than a *parochial* affair? Is not an agricultural parish benefited by its proximity to a manufacturing town? Does not the whole community in fact benefit by the exertions of each individual when in health and prosperity; and should not the whole community contribute to his support when in sickness and destitution?

Such reasoning appears to me consistent with

justice, and I feel confident that if these views were acted upon, great good would result from the change.

A PARISH OFFICER UNDER THE OLD AND NEW REGIMES.

### DELAYS AT THE COMMON LAW OFFICES.

To the Editor of the Legal Observer.

SIR,—Some years ago I addressed a letter to you complaining of the conduct of the Masters of one of the courts of law, who, instead of attending punctually at 11, were frequently half an hour after that time. I stated that I did not grudge these gentlemen, the Masters, their salaries; that I wished them to be well paid; and as I neither felt nor wished to appear actuated by insidious motives, I did not in my letter, nor in a reply to a question put by you in noticing it, name the court to which I alluded. You desired to know if the conduct complained of was of frequent occurrence. I refused to pledge myself that it was, although I had scarcely any doubt on the subject, and trusting the evil would be remedied, I let the matter drop. Many of the functionaries then complained of are removed; but, alas, Mr. Editor, those who remain, and some of their present associates, conduct themselves just in the same way as to attendance, being sometimes a quarter of an hour, sometimes 20 minutes, sometimes half and hour after 11, at the office at least, for the purpose of taxing costs. I cannot say that I on two or three recent occasions have ever sustained anything but *inconvenience*, though I had enough of that. I need not tell you that *injury* may be the result; and I am sure you know that the attorney, or clerk who represents him, and has a load of business at different offices to transact, has the whole of it disarranged and materially impeded by the delay, sometimes of 5 minutes, not to say from that to half an hour. I am not of importance sufficient to sign my name; and attorneys who are, or might venture, considering their office, no doubt shrink from complaining so as to be known; and as I do not still, out of good feeling, like to name the court, (though the parties will know well enough,) I am aware I write under the disadvantage of declining to make a full statement, and of being anonymous. But reserving for further consideration what I may be compelled to do, I beg to ask you and the gentlemen complained of; whether, putting the injury they do out of the question, they are not treating the *profession* with contempt, and whether even clerks (apart from representing their principals) ought to receive this treatment. They do not get their money easily, nor is it much, and why should they be so treated?

The complaint has been made by many attorneys, who may perhaps take up this matter.

Q. M. CLERICUS.

**THE LAW STUDENT.—No. 4.**

**CANDIDATES PASSED.**

*Trinity Term, 1846.*

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &amp;c.</i>
Adams, Henry . . . .	Charles Michelmore, Totnes—George Hensman, 8, Basing Lane
Adams, Richard . . . .	Samuel Smith, Walsall
Anderson, Weir . . . .	Charles Bardswell, Liverpool
Baldwin, Alexander . . . .	William Foster, Settle
Barret, Joseph Morton . . . .	Edward Barret, Otley
Barton, Samuel Milner . . . .	Thomas Higson, Manchester
Bassett, Thomas Prichard, (formerly Thos. Prichard Popkin)	
Berry, Josiah . . . .	Francis Braithwaite, Truro
Biddles, John Henry . . . .	Edward Barron, Bloomsbury Square
Bloodworth, Henry . . . .	Thomas Scriven, Northampton
Bowes, Richard . . . .	Robert Brown, Sunderland
Bowlby, Thomas William . . . .	Russell Bowlby, Bishop Wearmouth
Briggs, John Adolphus . . . .	Thomas Briggs, 55, Lincoln's Inn Fields
Brock, Benjamin, jun. . . .	William Jones, Carmarthen ;—Robert Medcalf, Lincoln's Inn Fields ;—Joseph Woodcock, Lincoln's Inn Fields
Brown, Thomas Augustus . . . .	William Hartcup, Bungay
Burrell, Peter Charles . . . .	Peter Ashwell Burrell, 1, White Hart Court, Lombard Street, —Simon Adams Beck, Ironmongers Hall
Burton, William . . . .	Rd. Meadowcroft Whitlow, Manchester
Chadwick, John Nurse . . . .	Boys R. Aldham, King's Lynn
Chew, Thomas Heath . . . .	William Christopher Chew, Manchester
Clark, George Hames . . . .	George Clark, 28, Finsbury Place
Clayton, Haviland . . . .	Henry Brayley Wedlake, 10, King's Bench Walk
Dale, Robert . . . .	William Smith, jun., York—William Gray, York
Dean, John Joseph . . . .	William Dean, 16, Essex Street, Strand
Desborough, Lawrence, jun. . . .	Lawrence Desborough, Sise Lane
Dickinson, William Henry Allen	William Henry Allen, 17, Clifford's Inn
Dixon, Edward Adolphus . . . .	Percival Walsh, jun., Oxford—Gordon Dayman, Oxford
Dransfield, William . . . .	Daniel Crosland Battye, Huddersfield
Driffell, Charles Edward . . . .	Walter Wren Driffell, Prescott
Duffield, William Ward . . . .	Edward Swinborne Chalk, Chelmsford
Elders, Thomas William . . . .	George Leeman, York
Evans, Robert . . . .	David Evans, Liverpool
Frankish, William . . . .	Samuel Lightfoot, Kingston-upon-Hull
Hadow, Henry . . . .	William Stephens, 30, Bedford Row
Harris, Joseph William . . . .	Cyril Prescott, late of Manchester
Harwood, Thomas Charles . . . .	Grantham Robert Dodd, New Broad Street—George Smith, 24, Golden Square
Hawkes, Henry . . . .	William Sextus Harding, Birmingham
Henderson, Henry Reany . . . .	James Henry Henderson, 31, Bloomsbury Square
Hodgson, John . . . .	Henry William Fenwick, Newcastle-upon-Tyne
Jones, John . . . .	George Salter, Ellesmere
Jones, John . . . .	Thomas Fowke Andrew Burnaby, Newark-upon-Trent
Long, George Henry . . . .	William Long, Windsor
Maberley, Thomas Henry . . . .	Thomas Maberley, Colchester
Mackay, Christopher Bainbridge	Christopher Bainbridge, South Shields
Mantell, Alexander Houstoun . . . .	John William Wall, Devises
Meech, Francis Weston . . . .	George Arden, Weymouth
Mellor, William Jones . . . .	Benjamin Aslabie Greene, St. Ives
Miles, Thomas . . . .	George James Nicholson, 5, Raymond Buildings
Nevill, Richard . . . .	Robert Nevill, Tamworth
Newill, Robert Daniel . . . .	Joshua John Peele, Shrewsbury
Niblett, Isaac Goodluck . . . .	John Kerle Haberfield, Bristol
Orchard, William Henry . . . .	Edward Farn, 14, Gray's Inn Square
Paley, Cornwallis . . . .	Thomas Farmery, Ripon
Parry, Thomas . . . .	Thomas Williams, Carmarthen
Patteson, Henry . . . .	John Taylor, Manchester

Peile, Rowland Babington . . .	Thomas Hanson Peile, 6, Great Winchester Street
Pidsley, John . . .	Parnenas Pearce, Newton Abbot
Pinnock, George . . .	James Robert Wemyss, Gloucester
Pollard, William Darley . . .	Harrison Blair, Manchester.
Radcliffe, Thomas . . .	James Neville, Blackburn
Ransom, Robert, jun. . .	Robert Ransom, sen., Sudbury
Robson, William Wealands, jun. .	George Walton Wright, Sunderland
Russell, James Ward . . .	James Russell, York
Sanders, Robert Muriel . . .	Robert Bradfield Sanders, 1, New Inn
Savile, Edward Bourchier . . .	Richard Brenaridge, Barnstaple
Simpeon, Henry . . .	Herbert Sturmy, 8, Wellington Street, Southwark
Slack, Edward Francis . . .	John Marsden, Wakefield—Joseph Phillips, Chippenhams
Slaney, Robert . . .	Francis Stanier, Newcastle-under-Lyne
Snell, Silas . . .	Henry Adoniah Vallack, Great Torrington
Stafford, William, jun. . .	William Stafford, 13, Buckingham Street, Strand
Turner, William Rawson . . .	Henry Copeman, Kingston-upon-Hull
Tweed, George Tash . . .	Charles Mason Innes Pollock, Great George Street, Westminster—Henry Hugh Beckitt, 64, Lincoln's Inn Fields
Unwin, Frederick George . . .	Thomas Unwin, Sawbridgeworth
Walker, Robert Greaves . . .	Henry Newton, York
Ward, Newman . . .	William James Norton, 1, New Street, Bishopsgate Street
Watts, Thomas David King . . .	Joseph Maynard, 57, Coleman Street
Westall, Samuel Thomas Maling .	Bryan Holme, New Inn
Weston, William Henry . . .	John Meek, 1, Basinghall Street — John Fox, Basinghall Street
Whiting, William . . .	William Harding Wright, 23, Essex Street
Wilkinson, Richard . . .	Roger Moser, Kendal
Woodgate, William . . .	William Tanner Neve, Cranbrook
Woodroffe, George Thomas . . .	William Woodroffe, Lincoln's Inn

## ANALYTICAL DIGEST OF CASES.

## REPORTED IN ALL THE COURTS,

## Common Law Courts.

## IV. PRACTICE.

## AFFIDAVIT.

1. *Deponent's addition*.—An affidavit sworn in London, in which the deponent was described as A. B., of, &c., "agent of the defendant in this cause," was held to contain a sufficient "addition" within the meaning of Rule I. of Hil. 2, W. 4, s. 5. *Mathewson v. Baistow*, 31 L. O. 114.

2. *Sworn before consul*.—A British consul, resident abroad, has authority to administer oath and take affidavits only in those cases in which oaths and affidavits may be taken and administered by a magistrate in England. *Held*, therefore, that an affidavit of service of a rule to show cause, sworn before the British consul at Paris, is not receivable. *Williams v. Welch*, 31 L. O. 320.

3. *Misnomer*.—Where a defendant was sued by the name of "Frederick Colston Prosser," an affidavit in support of an application to set aside proceedings, in which the defendant was described as Frederick C. Prosser, held bad. *Symes v. Prosser*, 31 L. O. 490.

And see *Warrant of Attorney*, 3; *Attachment*; *Judgment*, 2.

## AMENDMENT.

See *Assignees*.

## APPEAL.

1. *Notice of trying*.—*Practice of quarter sessions*.—*Mandamus*.—Where by the practice of sessions 28 days' notice of trial was required to be given in the case of respited appeals, and where that notice had not been given, and the sessions therefore refused to hear the appeal, and confirmed the order of removal: *Held*, that the practice was not so unreasonable as to induce this court to grant a mandamus, commanding the sessions to enter continuances and hear the appeal. The quarter sessions are the judges of their own rules of practice; and this court will not interfere with their determinations respecting them, unless the rules on which they have acted are so unreasonable as to be illegal. *Reg. v. Justices of Montgomeryshire*, 3 D. & L. 119; S. C. 31 L. O. 16.

Cases cited in the judgment: *Rex v. Justices of Wiltshire*, 10 East, 404; *Rex v. Justices of Monmouthshire*, 3 Dowl. 306; *Rex v. Justices of Lancashire*, 7 B. & C. 691; *Rex v. Justices of the West Riding of Yorkshire*, 5 B. & Ad. 667.

And see *Poor*, 2, 3; *Registration*.

## APPEARANCE.

*Setting aside*.—Where an appearance has been entered by the plaintiff for the defendant, without personal service of the writ of summons, and a declaration has been filed, the defendant should move to set aside the appearance, and not the declaration.

A motion to set aside the declaration alone, is irregular. *Brooks v. Roberts*, 3 D. & L. 13.

Cases cited in the judgment: *Hasker v. Jar-  
maine*, 1 C. & M. 408; S. C. 1 Dowl. 654;  
*Edwards v. Danks*, 4 Dowl. 357.

#### ASSIGNEES.

*Amending f. fa.*—*Motion, when in time.*—  
1 & 2 Vict. c. 110, s. 9.—An irregular *f. fa.*  
cannot be amended to the prejudice of the in-  
tervening rights of assignees.

Goods are taken on the 1st of March, under  
*f. fa.* upon an irregular judgment; on the 15th  
a fiat is awarded against the execution debtor,  
and assignees are chosen on the 12th of April;  
the judgment-roll is carried in on the 19th of  
April.

A motion on the 25th to set aside the pro-  
ceedings was held not to be made too late.

*Seem*, that an order for staying proceedings  
upon payment of debt and costs on a given  
day, is not within the 1 & 2 Vict. c. 110, s. 9.  
*Brooks v. Hodson*, 7 M. & G. 529.

#### ATTACHMENT.

*Non-performance of umpire's award.*—*Affidavit.*—The affidavit to ground a motion for an  
attachment for non-performance of an umpire's  
award should state the disagreement of the original  
arbitrators. *Griffiths v. Thomas*, 31  
L. O. 59.

#### ATTESTATION.

*See Warrant of attorney.*

#### AWARD.

*Rule to pay money.*—*Personal service.*—A  
rule calling on a party to pay money pursuant  
to an award, with a view to execution under the  
1 & 2 Vict. c. 110, is a rule *nisi* only, and the  
court refused to make such rule absolute, with-  
out personal service, where it appeared that  
such service might be effected. *Winwood v.*  
*Holt*, 3 D. & L. 85. *See Hawkins v. Benton*,  
2 D. & L. 465.

*See Attachment.*

#### BAIL.

*Taking money out of court.*—The court per-  
mitted bail to take out of court money which he  
had paid in for the defendant's use on a mo-  
tion for a commission to examine witnesses  
abroad, the defendant having died abroad, in-  
testate and insolvent, before the trial, the rule  
*nisi* having been served on all persons in any  
way interested in the cause. *Palmer v. Reif-  
enstein*, 7 M. & G. 641.

*Railway shares.*—Shares in a railway com-  
pany in actual operation are property in respect  
of which bail may justify. *Anon*, 31 L. O.  
490.

#### BANKRUPT.

*See Execution*, 2.

#### BOUNDARY.

*See Service of Process*, 2.

#### CAPIAS.

*Prisoner.*—*Notice of declaration.*—A defend-  
ant in custody under a writ of *capias*, issued  
pursuant to a judge's order, is not entitled to a

copy of the declaration filed while he was in  
custody; but the plaintiff may serve him with a  
notice of declaration, the *capias* being only a  
collateral proceeding in the suit. *Neale v.*  
*Snoultton*, 31 L. O. 137.

#### CERTIORARI.

1. *Sessions.*—*Fees.*—*Clerk of the Peace.*—

A table of fees to be received by the clerk of  
the peace was settled by the justices at quarter  
sessions, and sanctioned by the judges of as-  
sise for the county, according to the provi-  
sions of the 57 Geo. 3, c. 91. The justices, at  
a subsequent quarter sessions, made an order  
that the clerk of the peace shall not in future  
receive certain fees so allowed, namely, fees  
from defendants in misdemeanors.

*Held*, that a certiorari would lie to remove  
into this court an order so made by the sessions.

*Held*, that the clerk of the peace was legally  
entitled to the fees so allowed, and that the ses-  
sions, of their own authority, had no power to  
disallow any of the fees that had been so  
allowed by the judges of assise. *The Queen v.*  
*E. Coles*, 31 L. O. 95.

2. *Removing indictment for felony.*—A certio-  
rari to remove an indictment for felony will not  
be granted upon an affidavit alleging that the  
county in which the venue has been laid, is  
generally opposed to the politics professed by  
the defendant; and that his political opinions  
and position have rendered him an object of  
dialike in the county, and subjected him to  
abuse and threats of violence. *Ex parte Lynes*,  
31 L. O. 418.

3. *Objections reserved.*—Where the session  
have reserved a case for the opinion of this court  
and the case comes on for argument in the Crown  
Paper, and the order of sessions and the origi-  
nal order are brought up by certiorari in the  
ordinary manner, this court will only consider  
the questions reserved by the case for its  
opinion; and it is not competent for the party  
impugning the decision of the sessions to take  
any other objections to the orders, unless the  
objections have been stated to the court at the  
time the certiorari was moved for, and the  
court has assented to such objections being  
taken. *Reg. v. Inhabitants of Heyop*, 31 L. O.  
577.

And see *Poor*, 3.

#### CONTINUANCES.

*See Execution*, 4; *Notice of Trial*; *Warrant  
of Attorney*.

#### COMPOUNDING FELONY.

*See Warrant of Attorney*, 5.

#### DECLARATION.

*Time within the meaning of Rule 35, H. T. 2  
W. 4.*—*Waiver by defendant.*—A plaintiff in an  
action must not only file, but also give notice  
of his declaration within one year after the pro-  
cess is returnable. The absence, however, of  
the notice is an irregularity which may be  
waived by the defendant, and to ascertain that  
the court will grant a reference to the master.  
*Dailey v. Nind*, 31 L. O. 441.



## DISCONTINUANCE.

*Stay of proceedings.*—Judgment as in case of a nonsuit.—A rule to discontinue does not operate as a stay of proceedings; therefore, where the plaintiff served a rule to discontinue, with an appointment to tax the costs, and on the following day the defendant moved for and obtained a rule absolute for judgment as in case of a nonsuit, for not proceeding to trial pursuant to a peremptory undertaking: *Held*, that the defendant was regular. *Baker v. Jupp*, 31 L. O. 418.

And see *Stay of Proceedings*.

## DISTINGUISH.

*Statement of default to appear in affidavit.*—The affidavit in support of a motion for a distringas should state simply, that the defendant had not appeared, and is not sufficient where it contains the additional words, "according to the exigency of the writ." *Draye v. Bird*, 31 L. O. 370.

## EJECTMENT.

1. *Judgment against the casual ejector.*—Notice.—Where there are several tenants, the notice at the foot of the declaration served upon each, should contain the names of all.—*Doe d. Muskett v. Roe*, 31 L. O. 16.

2. *Service of declaration by post.*—When sufficient.—A copy declaration and notice in ejectment was sent to a tenant by post, accompanied by a letter explaining the meaning thereof; this, coupled with a subsequent acknowledgment by the tenant, that he received the copy declaration, &c., before the first day of term, is sufficient for a rule for judgment against the casual ejector, absolute in the first instance. *Doe ex dem. the Mayor, Commonalty, and Citizens of London v. Roe*, 31 L. O. 273.

3. *School house.*—Service.—In ejectment for a school house in which no one resides, service of the declaration upon a person who keeps the key, and on the schoolmaster, upon the premises, is not sufficient for a rule nisi for judgment against the casual ejector. *Doe d. King v. Roe*, 31 L. O. 392.

4. *Service of declaration, &c., by post.*—Sending a declaration, &c., in ejectment to the tenant by post is not sufficient service in the absence of an acknowledgment by him that he received them before term. *Doe d. Patteson v. Roe*, 31 L. O. 79.

5. *Affidavit of service of declaration, &c.*—An affidavit of service in ejectment, stating that the declaration and notice were explained to the tenant in possession, but omitting to state that they were read over to him, is sufficient for judgment absolute against the casual ejector. *Doe d. Weightman v. Roe*, 31 L. O. 578.

6. *Service of declaration on a stranger upon the premises.*—Service of a declaration in ejectment upon a stranger on the premises, with an admission by the tenant's wife, that the declaration and notice had come to her hands, was held sufficient for a rule nisi for judgment against the casual ejector. *Doe d. the Governors of the Grey Coat Hospital v. Roe*, 7 M. & G. 537.

7. *Service of declaration where possession vacant.*—In an ejectment for seven houses adjoining each other, and held under one lease, the tenants of four having been duly served, the court granted a "serviceable rule absolute" as to the other three, which were empty, upon an affidavit stating that the tenant had left them and embarked with his family for America; that the lessee was dead intestate and insolvent; and that copies of the declaration and notice had been affixed on the outer doors of the three houses, and a copy served on one D., the attorney for one Jones, who had been in the habit of receiving the rents. *Doe d. Pope v. Roe*, 7 M. & G. 602. See *Doe d. Osbaldeston v. Roe*, 1 Dowd. P. C. 456.

## ERROR.

*Craving oyer.*—Service of rule.—The court dispensed with the attendance of the plaintiff in error to crave oyer of the record of an indictment for bigamy, for the purpose of assigning errors, where it appeared that he was resident in Australia, where he had been for the last 30 years; that he was 66 years of age, and subject to paralytic attacks; and that he could not make the journey to this country without injury to his health, and without considerable pecuniary loss. Where the prosector and his attorney were both dead, the court directed service of the rule to join in error to be made by sticking it up in the crown office, and serving a copy on the solicitor to the Treasury. *Murray v. The Queen*, 3 D. & L. 103.

## EXECUTION.

1. *Judge's certificate for immediate execution.*—A judge's certificate, (under the 1 W. 4, c. 7, s. 2,) that execution shall issue "forthwith," means in the ordinary course of the office; and the court refused to allow the plaintiff to sign judgment before the expiration of four days after the trial.

The proper course would have been to apply to the judge who tried the cause. *Snooks v. Smith*, 7 M. & G. 528.

2. *Warrant of attorney.*—Bankrupt.—Where judgment has been entered up more than twelve months on a warrant of attorney, an agreement to waive the necessity of a *scire facias* is not a condition which renders the warrant of attorney void as against the assignees of a bankrupt for want of enrolment under the 3 Geo. 4, c. 39.

Writs in the new form need not be continued in a similar manner to those in the old form. On meane process a writ may be issued in continuation of another at any time within twelve months. Writs of execution have no such limit. *Harmer v. Johnson*, 31 L. O. 138.

3. *Return of writ.*—*Scire facias* before making out a second writ, when unnecessary.—If a *ca. sa.*, or other final process, returnable upon execution, be issued within a year and a day of the judgment, but has produced no satisfaction, another writ (even of a kind different from the first) may be sued out at any time afterwards, without previously returning the first

writ, or issuing a *scire facias*.—*Franklin v. Hodgkinson*, 31 L. O. 440.

4. *Successive writs*.—*Entry of continuances. Warrant of attorney*.—In August, 1841, the defendant executed to the plaintiff a warrant of attorney, with a defence. Judgment was signed thereon on the 13th Sept. 1841, but the roll was never carried in. By a judge's order, obtained by consent on the 9th Sept. 1842, it was ordered that execution should issue on the judgment without a *scire facias*. On the 14th Sept. a *scire facias* was issued, which was returned *nolle prosequi* on the 29th, and filed on the 20th December, 1842. In April 1845, an alias *scire facias* was issued, under which the defendant's goods were taken: He afterwards became bankrupt. *Held*, first, that the judge's order was not void as against the assignees, under 3 G. 4, c. 39. Secondly, that the alias *scire facias* was regular; for that since the stats. 2 W. 4, c. 39, and 3 & 4. W. 4. c. 67, succeeding writs of execution need not be tested on the return day of the preceding writ, and may be sued out at any time afterwards, without the necessity of entering continuances on the roll. *Harmer v. Johnson*, 14 M. & W. 336.

Cases cited in the judgment: *Kemp v. Hyslop*, 2 M. & W. 63; *Nicholson v. Leman*, 2 Dowl. P. C. 296; *Gregory v. Desanges*, 5 Dowl. P. C. 193.

And see *Assignees*.

#### FEEs.

See *Certiorari*, 1; *Sheriff*, 1.

#### INDICTMENT.

*Description of Prosecutor*.—In an indictment it is sufficient to describe the prosecutor according to the name by which he is commonly and best known.

A foreigner by the name of Charles Frederick Augustus William D'Esté, commonly called Duke of Brunswick, who was resident in this country, but was not the reigning prince, was held to be sufficiently described in an indictment, as Charles Frederic Augustus William Duke of Brunswick and Luneberg. *The Queen v. Gregory*, 31 L. O. 417.

#### INSOLVENT.

*Protection under stat. 7 & 8 Vict. c. 70, s. 7*.—A protection granted by a commissioner of the court of bankruptcy to a debtor under the stat. 7 & 8 Vict. c. 70, s. 7, "upon the examination" of the debtor's petition, cannot be extended from time to time. *Mazeman v. Davis*, 31 L. O. 294.

#### INTERPLEADER.

See *Sheriff*, 2.

#### INTEREST.

See *Writ of Summons*.

#### ISSUE.

*Irregularity*.—An issue delivered with blanks for dates is not a nullity, but merely irregular, and therefore the irregularity may be waived. *Peart v. Hughes*, 31 L. O. 137.

#### ISSUABLE PLEAS.

After obtaining an order for particulars of set-off, it is too late to sign judgment on the ground that the pleas delivered are not issuable, the defendant being under terms. *Scott v. Weston*, 31 L. O. 16.

See *Waiver*.

#### JUDGE'S JURISDICTION.

Under the new rules of pleading, (Hilary Term, 4 W. 4.) a summons was taken out before a judge at chambers, for the plaintiff to show cause why one of the counts in a declaration should not be struck out; the summons was dismissed and application for the same purpose was then made to this court.

*Held*, that the court would not entertain such an application, because the original jurisdiction is given to a single judge, and there is no appeal in such case to the full court. *Slack v. Clifton*, 31 L. O. 417.

And see *Replevin*; *Staying Proceedings*.

#### JUDGMENT.

*Nunc pro tunc*.—Where there were issues of fact and of law, and after verdict for the plaintiff on the former, and a rule for a new trial, which was discharged, the plaintiff, in the same term in which the rule was discharged, set down the demurrer in the special paper, but died before it came on for argument, judgment having subsequently been given for him on the demurrer, the court made absolute a rule to enter up judgment as of the term in which the demurrer was set down for argument. *Miles v. Bough*, 3 D. & L. 105.

Cases cited in the judgment: *Lawrance v. Hodgson*, 1 Y. & J. 308; *Bridges v. Smyth*, 8 Bing. 29.

2. *Old warrant of attorney*.—Leave to enter up judgment upon an old warrant of attorney obtained upon the affidavit of the plaintiff's assistant who supplied the goods for the price at which the security was given. *Cubbold and another v. Adams and another*, 31 L. O. 59.

#### JUDGMENT AS IN CASE OF NONSUIT.

1. *Stet processus*.—Where the plaintiff had become bankrupt after issue joined, the court discharged a rule for judgment as in case of a nonsuit, and refused to direct a *stet processus*. *Cross v. Robertson*, 7 M. & G. 640.

2. *Remanet*.—The plaintiff having given a *peremptory undertaking* to try at the London Sittings after Easter Term, gave notice of trial accordingly, and entered the cause, which had been made a special jury cause, on the last day for entering causes for trial at those sittings, and the cause stood No. 20 in the list; but there being only two days for the sittings, it was, with four others, made a remanet to the sittings after Trinity Term: *Held*, that under these circumstances, the plaintiff was not in default, so as to entitle the defendant to judgment as in case of a nonsuit, for not proceeding to trial pursuant to his undertaking. *Lumley v. Duboury*, 14 M. & W. 295, S. C. 3 D. & L. 80. And see 8 Scott, N. R. 705.

Case cited by the court: *Petrie v. Cullen*, 14 Law J., N.S., C. P. 29.

3. *Small debt*.—It is no answer to a rule for judgment as in case of a nonsuit, that the action is brought for a sum recoverable in a court of requests. *Nicholson v. Jackson*, 31 L. O. 36.

4. *Discontinuance*.—The plaintiff cannot have a rule to discontinue pending a rule which stays the proceedings. *Murray v. Silver*, 31 L. O. 36.

5. *Peremptory undertaking*.—An affidavit in answer to a rule for judgment as in case of a nonsuit, should state some definite fact as an excuse for not proceeding to trial, and where it was sworn that the plaintiff had not proceeded to trial, because he had been in hopes of settling the action, the affidavit was held insufficient, as it did not state a negotiation for that purpose. *Winnah v. Denley and another*, 31 L. O. 231.

And see *Setting-off*; *Discontinuance*.

#### JUROR.

*Withdrawal of*.—*Stay of proceedings*.—The withdrawal of a juror by consent of counsel on both sides, puts an end to that cause of action, therefore if a second action be brought for the same cause, the court will stay proceedings with costs. *Gibbs v. Ralph*, 31 L. O. 249.

#### MANDAMUS.

See *Appeal*.

#### MISCARRIAGE OF COURT.

Upon the trial of a cause, in which three issues were raised, each going to the whole cause of action, it was agreed on both sides that the verdict should be taken by the associate in the absence of the judge, who, before he retired from the court, directed the associate to take the verdict upon each of the issues separately. Upon the return of the jury, the associate asked them whether they found for the plaintiff or the defendant; and the foreman answered "for the plaintiff." The defendant's counsel requested the associate to put the questions left to the jury by the judge, to which the plaintiff's counsel objected; whereupon the associate refused to put the question, and ultimately a general verdict was entered for the plaintiff: *Held*, that the neglect to take the verdict upon each of the issues, was a miscarriage on the part of the officer of the court in taking the verdict; and the court, therefore, made a rule absolute for a new trial, without costs on either side. *Bentley v. Fleming*, 3 D. & L. 23.

#### MISNOMER.

See *Affidavit*, 3.

#### MONEY IN COURT.

See *Bail*; *Staying proceedings*, 1.

#### NOTICE OF APPEAL.

*Signature, &c.*—A notice of appeal against an order of removal, beginning "We the undersigned, being a majority of the churchwardens and overseers of the parish of," &c. and signed by one churchwarden and four overseers, (there

being six altogether in the parish,) is sufficient, without stating that they were the majority at a meeting duly convened. *Reg. v. Justices of the West Riding of Yorkshire*, 3 D. & L. 152.

#### NOTICE OF DECLARATION.

See *Capias*.

#### NOTICE TO PRODUCE.

1. In an action on a bill of exchange, to which the defendant pleaded a plea of fraud and covin: *Held*, that a notice by the defendant to produce the bill, left in the letter-box of the office of the plaintiff's attorney in London at half-past 8 o'clock in the evening before the cause was tried at the Middlesex Sittings, the plaintiff also being resident in London, was too late.

*Held*, also, that the plaintiff was not bound to produce the bill on the trial without notice. *Lawrence v. Clark*, 14 M. & W. 250; S. C. 3 D. L. 87.

Cases cited by the court: *Read v. Gamble*, 10 A. & E. 597, n.; *Harvey v. Morgan*, 2 Stark. N. P. C. 17; *Atkins v. Meredith*, 4 Dowl. P. C. 658; *George v. Thompson*, 4 Dowl. P. C. 656.

#### NOTICE OF TRIAL.

*Continuance*.—Notice of trial by continuance from the sittings in, to the sittings after Term, in London, may be given, and, after such notice, the cause may be tried at the adjournment day. *Toulmin v. Elgie*, 31 L. O. 465.

#### NOTICE OF TAXATION.

The court will not, as a matter of course, set aside a judgment as irregular, because notice of taxation has not been given to the opposite party, but will exercise their discretion under the circumstances of the case. *Iderton v. Still*, 31 L. O. 79.

#### NUL TIEL RECORD.

On plea of *nul tiel record*, it is no objection that the award of the venue and the distringas are cancelled by lines being drawn across them. *Hodgson v. Chetwynd*, 3 D. & L. 45.

#### OPENING RULE.

1. *Fresh affidavits, when not allowed*.—After a rule has been argued and disposed of, it cannot be opened upon fresh affidavits denying the facts sworn to by the successful party, and by which the decision of the court was governed. *Doe dem. Kell v. Brown*, 31 L. O. 273.

2. Where a rule to discharge a defendant out of custody was discharged, on the ground of the incompleteness of the affidavits, the court will not entertain a fresh application on affidavits supplying the former defects. *Martin v. Dore*, 31 L. O. 391.

#### OYER.

See *Error*.

#### PARTICULARS.

1. *Railway Company*.—*Costs*.—In an action by an engineer against a railway company, the particulars of the plaintiff's demand claimed

one gross sum for surveying, travelling expenses, assistance, &c. *Held*, sufficient, and that it was not necessary to specify the amount of the particular items which composed the general charge.

Though, as a general rule, a party who shows cause in the first instance, is not entitled to costs, yet there is an exception in cases where the rule, if granted, would prejudice the party by causing delay. *Rennie v. Beraford*, 31 L. O. 370.

2. *Engineer.*—*Railway Company.*—In an action by an engineer against a railway company, it is sufficient to state in the bill of particulars, that the plaintiff claims a certain sum in respect of a survey, without saying what time he was engaged upon it, or how many persons were employed, or the rate of charge per mile; nor need he particularly describe the trial sections and books of reference. *Higgins v. Ede*, 31 L. O. 442.

3. *Breaches before plea.*—*Bond.*—The court will not grant a rule nisi for the delivery of particulars of breaches, where the declaration in an action on a bond is in the general form, it appearing that considerable delay would be the result.

*Semble*, that no such application can be made, successfully at least, until after the plaintiff has replied. *Mettrille v. Provost*, 31 L. O. 441.

#### PATENT.

*Notice of objection, sufficient peculiarity in.*—In case for infringing of a patent for improvements in machinery, the notice of objections delivered pursuant to 5 & 6 W. 4, c. 83, s. 5, stated that the invention was known to, and used by, A. and B., and others, before the grant. The court refused to require the defendant to strike out the words "and others." *Bentley v. Keighley*, 7 M. & G. 652.

Case cited in the judgment: *Jones v. Berger*, 5 M. & G. 208; 5 Scott, N. R. 208.

#### PERJURY.

See *Trial*, New, 3.

#### POOR.

1. *Heading and jurat to examination.*—On appeal against an order of removal, it appeared by the copies of examination sent, that the examination of R., (which was essential to the settlement,) was alleged in the jurat to be taken and sworn before, and was signed by, two parties, whose names only, without any description of their office, were given. The heading did not show before whom the examination was taken, and the name of the party examined appeared in the heading only. *Held*, that the order must be quashed; although on the same sheet of paper with and preceding R.'s examination, was an examination of S., headed "The examination of S., the pauper, taken upon oath before us, two of her Majesty's justices," &c., (describing the character properly,) the jurat of which was signed with the same names as the other examination; and although the headings and jurats gave the same date to each examination, and the examination

of R. mentioned S. as the payer. *Queen v. Inhabitants of Shipston on Stour*, 6 Q. B. 119. See *Reg. v. Rotherham*, 3 Q. B. 776.

2. *Appeal to sessions.*—*What constitutes a "hearing."*—The consideration of a notice of appeal is merely preliminary to a "hearing" of the appeal; therefore, if at the trial of an appeal notice be objected to, and the sessions hold it to be bad, and dismiss the appeal, this court will, if the decision be erroneous, award a mandamus to enter continuances and hear. *Reg. v. Justices of Surrey*, 31 L. O. 534.

3. *Certiorari when granted before appeal to the sessions.*—If an order of appeal be defective on the face of it, the court will, in the exercise of its discretion, grant a certiorari to remove it, although the applicants might have appealed to the sessions, but have not done so. *Reg. v. Blaythwait*, 31 L. O. 560.

#### PRISONER.

See *Copies*.

#### QUALIFICATION.

*Venue.*—*County.*—Where a statute requires certain qualifications in persons acting under it, and provides, that in an action for penalties for acting without qualification, the defendant shall prove his qualification, it is sufficient to allege that the defendant was not qualified without specifying in what his disqualification consisted.

Since the rule in *H. T.*, 4 W. 4, r. 2, the venue is the county for all purposes; therefore, in declaring for a penalty, it is not necessary to aver that the offence was committed within the county in which the venue was laid. *Cook v. Swift*, 3 D. & L. 67.

#### RAILWAY.

See *Rail: Particulars*.

#### REFERENCE.

See *Trial*, 4.

#### REGISTRATION APPEALS.

*Time for giving notice to respondent of prosecuting appeal.*—*Waiver.*—In appeals from the decisions of revising barristers, a waiver by the respondent of notice of the appellant's intention to prosecute the appeal, pursuant to stat. 6 Vict. 18, s. 64, will not dispense with the necessity of proving such notice to have been given, before the appeal can be heard. *Newton v. Overseers of Moberley*, 31 L. O. 115.

#### REPLEVIN.

*Power of judge at chambers.*—*Replevin bonds* are not an exception to the rule that, on a bond, the plaintiff cannot recover more than the penalty and costs of suit on the bond. Therefore proceedings in such suit may be stayed on payment of the penalty and costs, though the plaintiff's costs in the replevin suit much exceed the penalty.

A judge at chambers may order the stay of proceedings. *Branscombe v. Scarborough*, 6 Q. B. 13.

Cases cited in the judgment: *Lord Lonsdale v. Church*, 2 T. R. 388; *Heilen v. Ardley*, 3 Car. & P. 12.

## SCIRE FACIAS.

1. *Heir and terre-tenant*.—By rule 79, H. T., 2 W. 4, a *scire facias* to revive a judgment more than fifteen years old, shall not be allowed without a rule to show cause; but when judgment has been revived by *scire facias* against the personal representative, and a return of *nihil* has been made, a *scire facias* against his heir and *terre-tenant* may be allowed without a rule to show cause.

*Semble*, a *scire facias* will not lie against the heir and *terre-tenant*, till a *nihil* has been returned to a *scire facias* against his personal representatives. *Wright v. Maddocks*, 31 L. O. 158.

2. *Judgments above twenty years' old*.—Whether or not a *scire facias* is generally allowable to revive a judgment which is more than 20 years old, the court will certainly allow it to go, if payments appear to have been made within 20 years. *Williams v. Welch*, 31 L. O. 320. And see *Execution*, 3.

## SERVICE OF PROCESS.

1. *Setting aside*.—Unless it be distinctly shown that process has not come to the knowledge of a defendant, the court will not set aside proceedings upon a statement that the defendant has not been served with, or had notice of, the process. *Emerson v. Brown*, 7 M. & G. 476.

2. *Wrong county*.—*Affidavit*.—*Boundary*.—An affidavit stating that process into county A., was served in county B., more than 200 yards from the boundary, is sufficient to ground a motion to set aside the service, without negating the existence of any disputes as to the boundary. *Martyn v. Gray*, 7 M. & G. 650.

## SERVICE OF RULE.

1. *To Compute*.—A rule to issue execution under 1 & 2 Vict. c. 110, s. 18, for money due upon an award and the Master's allocatur, is a rule *nisi* only in the first instance. And *semble*, that such a rule ought to be personally served, notwithstanding that the award and the allocatur, together with the rule making the order of reference a rule of court, have been personally served, and the amount demanded. *Winwood v. Hault*, 14 M. & W. 197. See *Jordan v. Berwick*, 1 Dowl. P. C., N. S. 271; *Doe d. Moody v. Squire*, 2 Dowl. P. C., N. S. 327; *Hawkins v. Benton*, 2 Dowl. & L. 465.

2. An affidavit stating that a rule *nisi* to compute was served upon the defendant's sister-in-law, at his dwelling house, and that she was a member of his family, is sufficient, though it be not sworn that the deponent had subsequently called at the house and ascertained that the rule had been delivered to the defendant. *Pook v. Raphael*, 31 L. O. 96.

## SERVICE OF WRIT.

*Irregularity*.—*Waiver*.—*Appearance*.—Service of a copy of a writ of summons was set aside as irregular, when one of several defendants was described in the copy as residing at Bristol, in the county of Gloucester.

The court held, also, that the irregularity was not waived by an offer on the part of the other

defendants to pay the amount claimed, the defendant in question not having appeared to the writ. *Levi v. Perrott and others*, 31 L. O. 535. And see *Award*.

## SETTING-OFF JUDGMENT.

*Different courts*.—*Trustee*.—One judgment may, upon motion, be set-off against another judgment between the same parties in a different court, provided the parties are interested in their respective judgments in the same right. *Bristowe v. Needham*, 7 M. & G. 648. And see 7 M. & G. 589.

## SETTING ASIDE.

See *Appearance*.

## SHERIFF.

1. *Fees*.—*Semble*. That before moving for an attachment against a sheriff, under stat. 7 Will. 4, and 1 Vict. c. 55, s. 3, there should be a reference to the master to say whether the sum charged by way of expenses be reasonable. *Stiles v. Meek*, 31 L. O. 80.

2. *Interpleader*.—*Trespass*.—A claim having been made to certain goods seized by the sheriff under a *f. fa.*, an interpleader order directed the goods to be sold, and the money paid into court to abide the event of an issue. The issue was tried and found for the claimant, who then brought an action against the sheriff for breaking and entering his dwelling-house, and seizing and converting his goods. *Held*, that the sheriff was entitled to have struck out of the declaration so much as related to the goods, and that an application for that purpose, after time to plead, was not too late.

*Held*, also, that if the claimant had sustained any special damage, that fact should have been stated to the judge, and *semble*, in such case he would have no jurisdiction to make any order. *Abbott v. Richards*, 31 L. O. 343.

## STAYING PROCEEDINGS.

1. *Payment into court*.—Where after writ issued the defendant obtains a summons to stay proceedings on payment of a certain sum, which the plaintiff refuses to accept, alleging that more is due, and on the trial the plaintiff recovers less than that amount, he is entitled to costs, unless the defendant has paid the sum offered into court. *Clark v. Dunn*, 31 L. O. 222.

2. *Rule to discontinue*.—Where a rule *nisi* had been obtained for judgment as in case of a nonsuit, with a stay of proceedings, the court set aside a rule to discontinue subsequently obtained. *Murray v. Silver*, 3 D. & L. 96.

Case cited in the judgment: *Lowe v. Peacock*, Barnes, 316.

3. *Judge's order*.—The plaintiff agreed with the defendant to withdraw the record in an action on two cheques, which stood ready for trial in the Exchequer, upon the terms that the defendant should pay the debt, interest, and costs, on or before a certain day, or in default of payment, that the plaintiff should be at liberty to sign judgment, and that a judge's order should be given to secure payment. The

Court of Exchequer having afterwards set aside the judge's order, which had been made in pursuance of the above agreement, the plaintiff brought an action on the agreement in this court. *Held*, that these facts formed no ground for staying the proceedings in the action in this court. *Wade v. Simon*, 3 D. & L. 27.

4. *Payment of rent and costs.*—A sub-lessee is a tenant of premises within the meaning of the stat. 4 G. 2, c. 28, s. 4, and is therefore entitled to a stay of proceedings upon payment into court of the rent in arrear and costs. *Doe d. Wyatt v. Byron*, 3 D. & L. 31.

5. *Stay of proceedings.*—Where judgment and a summons to stay proceedings are due at the same time, the latter must be attended before judgment can be signed, even though it be such as an adverse order cannot be made on.

A summons to stay proceedings is waived by the delivery of a plea before the summons is due. *Barton v. Warren*, 3 D. & L. 142.

6. *Service of order.—Amendment.*—The rule of practice that an order must be drawn up and served before the other party is in a situation to take a fresh step, in order to operate as a stay of proceedings, applies to an order to amend on payment of costs to be taxed. *Normanby v. Jones*, 4 D. & L. 143.

And see *Juror, withdrawal of*.

#### TIME.

See *Declaration*.

#### TRESPASS.

See *Sheriff*, 2.

#### TRIAL, NEW.

1. *Several parties.*—Where a verdict has been found for one of the several defendants, and against the others, and the latter apply to set it aside, the rule should call on the successful defendant, as well as the plaintiff, to show cause.—*Belcher v. Magnay*, 3 D. & L. 70.

2. *Semble*, that where a nonsuit is only moved for, the court will not grant a new trial. *Wilkins v. Bromhead*, 6 M. & G. 963.

3. *Perjury, when new trial to be moved for.*—In an action for work and labour, wherein the plaintiff obtained a verdict for 9l. 6s., the court refused to entertain a motion for a new trial after the usual time, although since the trial, and not until after the expiration of the term in which the motion might have been regularly made, it was discovered that the witness upon whose evidence the verdict was obtained had perjured himself at the trial, and although he had been indicted for the offence, and a true bill had been found against him. *Spufford v. Brown*, 31 L. O. 78.

4. *Writ of Trial.—Verdict subject to reference.*—Though a sheriff, upon trial had under a writ of trial, has no power to take a verdict by consent, subject to a reference, still a verdict so taken is not a nullity. Therefore, where, after a verdict so taken for the plaintiff, the reference went off, and the plaintiff, without the defendant's consent, or leave of the court, altered the writ of trial, proceeded to a second trial, and obtained a verdict, such verdict was set aside. *Harrison v. Greenwood*, 31 L. O. 249.

5. *Verdict against the weight of evidence.*—If the verdict be against the weight of evidence a new trial will be granted, as well in case of trials before a sheriff as before a judge, but the court will refuse to interfere where the case has been left to the jury upon the credibility of the witnesses. *Walton v. Land*, 31 L. O. 78.

#### TROVER.

*Conversion.—Leave and licence.*—A., a wharfinger, delivered goods to B. by mistake, who, when the mistake was discovered, had sold a portion of them, but offered to give up the remainder, and pay a reasonable sum for those sold. *Held*, that under the plea of leave and licence there was a conversion, by disposing of part of the goods after the mistake had been discovered; and that the qualified property which A. had in the goods was not terminated by delivery to B. under a mistake. *Bassett v. Pearce*, 31 L. O. 34.

#### UMPIRE.

See *Attachment*.

#### USE AND OCCUPATION.

*Yearly tenancy.*—Occupation and the mere payment of an aliquot portion of an annual rent at the expiration of a quarter, is not sufficient evidence of a yearly tenancy. *Clemmett v. Bradbee*, 31 L. O. 512.

#### VENUE.

*Changing.*—The venue may, since the stat. 5 & 6 Will 4, c. 76, be changed to Bristol between the Summer and Lent assizes, upon the usual affidavit that the cause of action arose there and not elsewhere; and the rule for so changing it is absolute in the first instance. *Cole v. Gain*, 31 L. O. 35.

#### WAIVER.

*Undertaking to plead issuably.*—Obtaining time to reply is a waiver of any objection to the defendant's non-compliance with an undertaking to plead issuably. *Stead v. Carey*, 7 M. & G. 646.

Case cited in the judgment: *Trott v. Smith*, 9 M. & W. 765; 2 Dowl. N. S. 278.

And see *Service of writ*.

#### WARRANT OF ATTORNEY.

1. *Continuance of writs.*—More than a year having elapsed after judgment entered up on a warrant of attorney, the defendant agreed to waive the necessity of a *scire facias*: *Held*, that such agreement was no part of the defence or condition, and did not render the warrant of attorney void as against the defendant's assignees, for want of enrolment under 3 G. 4, c. 39.

Writs in the new form do not require to be connected by continuances as writs under the old forms. On final process, one writ may issue in continuation of another at any time; but on meane process, the writ in continuation must issue within twelve months after the issuing of the prior suit. *Harmer v. Johnson*, 3 D. & L. 38.

Cases cited in the judgment: *Bennett v. Daniel*, 10 B. & C. 500; S. C. 5 M. & R. 444; *Kemp v. Bishop*, 1 M. & W. 58; S. C. 4 Dowl. 687; *Nicholson v. Leman*, 2 Cr. & M. 469; S. C. 2 Dowl. 226; *Gregory v. Des Anges*, 3 Bing. N. C. 85; S. C. 3 Scott, 534; 5 Dowl. 198.

2. *Attestation of execution*.—The attestation of execution of a warrant of attorney ran thus:—"Signed, &c., in the presence of H. W., attorney for the said Lord K., and expressly named by him, and attending at his request; and I hereby subscribe myself to be the attorney of him, having read over and explained to him the nature and effect of the above warrant of attorney before the same was executed by him; and I hereby subscribe my name as a witness to the due execution thereof." The words "H. W." were in that person's handwriting. Held, that there had been a sufficient compliance with the statute, and that the attestation was therefore good. *Lewis v. Lord Kensington*, 31 L. O. 561.

3. *Affidavit*.—An application to set aside a warrant of attorney, on the ground of its not having been duly attested in compliance with the stat. 1 & 2 Vict. c. 110, where there is reason to suppose that the defendant is resident abroad, can only be made by the party himself, or by an attorney employed and authorised by him for that purpose. *Hume v. Lord Wellesley*, 31 L. O. 391.

4. *Judgment to be entered up jointly and not severally*.—Where a warrant of attorney, executed by two persons, authorizes the receiving of "a declaration," and the entering up of "a judgment" in "an action," and also the execution of "a good and sufficient release," one joint judgment only can be entered up thereon, and this, notwithstanding the authority so given, is expressed to be, "for us and each of us." *Dalrymple v. Dawes*, 31 L. O. 392.

5. *Compounding felony—Setting aside*.—If a warrant of attorney be given, pending, and in order to compound a prosecution for felony, the court will set it aside, though it does not appear that the prosecution could have been successfully continued, and although it be sworn that the magistrate before whom it was pending, had expressed great doubt upon the subject. *Ex parte Critchley*, 31 L. O. 489.

And see *Execution*, 2, 4.; *Judgment*, 2.

#### WRIT OF SUMMONS.

6. *Indorsement of interest*.—If in the indorsement of a writ of summons interest be specifically claimed, either the amount of interest due up to the date of writ or the day from which it is claimed must be stated; and if the indorsement merely state that the plaintiff claims debt and interest, thus—"150l. for debt and interest thereon;" the defendant may move to set aside the writ, copy, and service for irregularity. *Chapman v. Beck*, 31 L. O. 114.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Halls Court.

*Whitaker v. Home*. June 30th.

#### PRODUCTION OF DOCUMENTS.—MASTER.

*An order to produce documents before the Master continues in force, although a subsequent order may have been made giving liberty to inspect them at the office of a solicitor.*

IN this case a reference had been made to the Master at the hearing to ascertain the next of kin and heir of a testator and his domicile, with the usual directions for the production of documents for the purposes of the inquiries before him. Subsequently an order was made that the parties should be at liberty to inspect the documents at the office of the solicitor of the defendants.

The only inquiry which now remained before the Master was as to the domicile; and upon this inquiry the plaintiffs were desirous of having several of the documents produced before the Master, for the purpose of proving them. The Master, however, considered that his power had been taken away by the order for inspection.

Mr. Purvis and Mr. Beavan for the motion.

But as Lord Langdale expressed his opinion that the two orders could stand very well together, and that the Master's power was not taken away, no order was made.

### Vice-Chancellor of England.

*Appleyard v. Owes*. April 15th and 30th, 1846.

#### INFANT.—COSTS.

*An infant plaintiff who repudiates a suit on coming of age is not entitled to costs, unless the suit has been improperly instituted.*

THIS was an application on the part of one of the plaintiffs, who at the time the bill was filed was an infant, but had since come of age, that further proceedings in the suit might be stayed, that his name might be struck out, and that the next friend might pay the costs.

Mr. Bethell, for the motion, said that unless an infant repudiated the suit he became liable for costs, but he was at perfect liberty on coming of age, if he disapproved the suit, to withdraw from the further prosecution of it, and to be indemnified from costs. He cited *Anon*, 4 Mad. 461.

Mr. Stuart and Mr. Batten, contra, said that the common order was to strike out the name of the plaintiff, and to give leave to amend, by making the plaintiff a defendant, and by allowing the proceedings to be continued in the name of the remaining plaintiff. *Guy v. Guy*, 2 Beav. 460.

The Vice-Chancellor said he believed the

practice to be as it had been stated by Mr. Stuart, but he would direct inquiry to be made before making his order.

April 30th.—His Honor this morning said he had ascertained from the register that it was not usual to make the next friend pay costs, unless the court was satisfied the suit had been improperly instituted, and as that was not the case here, he should make no order as to costs.

**Queen's Bench Practice Court.**

*Doe d. Newstead v. Roe.* Easter Term, 1846.

EJECTMENT.—UNDERTAKING, &c., UNDER STAT. 1 GEO. 4, C. 87, S. 1. WHEN REQUIRED.

*If an agreement for a tenancy from year to year has been executed, the tenant may be ruled to give an undertaking and enter into a recognizance under the stat. 1 Geo. 4, c. 87, s. 1, although on the same day upon which such agreement was executed another (stated to be a "supplemental" one), was entered in to by which the landlord engaged that the holding should continue until the happening of a certain event.*

A rule had been obtained calling upon the tenant to show cause why, upon being admitted defendant, he should not undertake, in case a verdict should pass for the plaintiff, to give him judgment; and why he should not enter into a recognizance for the costs and damages which should be recovered pursuant to the stat. 1 Geo. 4, c. 87, s. 1.

The rule was obtained upon an affidavit stating, that the tenant held under a written agreement as tenant from year to year; but the affidavit in answer alleged, that upon the day on which such agreement was executed the parties entered into a "supplemental" agreement, by which the lessor of the plaintiff engaged that the tenant should hold so long as the lessor of the plaintiff continued vicar of C., provided that he paid his rent and observed the stipulations specified in both agreements.

Atkinson now showed cause, submitting that the "supplemental" agreement mentioned in the tenant's affidavit was part and parcel of the first agreement, and that consequently the tenancy was determinable upon an uncertain contingency, and was not to continue "for any term or number of years certain, or from year to year," within the meaning of the statute. *Doe d. Pemberton v. Roe*, 7 B. & C. 2.

Unthank, in support of the rule, was not called upon.

Wightman, J. The second agreement did not vary the effect of the first, though a breach of it may furnish a ground of action.

Rule absolute.

*Loutreuil v. Phillippe.* Easter Term, 1846.

AFFIDAVIT FOR SECURITY FOR COSTS.—DESCRIPTION OF DEFENDANT.

*An affidavit of the defendant in support of a rule to compel the plaintiff to give security*

*for costs is sufficient, if it can be collected from the context that the deponent is the defendant in the cause, although he is not so described in terms.*

Ball had obtained a rule nisi calling upon the plaintiff to show cause why he should not give security for costs upon an affidavit of the defendant commencing—"Talon Jacques Phillippe, of the Strand Theatre, physician," and stating that "on, &c., he was served with a copy of a writ of summons which purported to be issued out of this honourable court at the suit of the above-named plaintiff."

Hoggins now showed cause. The affidavit ought to have stated the deponent to be "the defendant in the cause." *Johnson v. Smallwood*, 2 Dowl. 588: *France v. Wright*, 3 Dowl. 325. [Coleridge, J. The defendant says he was served with a copy of a writ of summons.] But it is consistent with the affidavit that he may have been served with a writ of summons "purporting" to be, but in reality not at all connected with this action.

Ball, in support of the rule, was not called on. Coleridge, J. There is nothing in the objection, for sufficiently appears from the affidavit that the deponent is the defendant in the cause.

Rule absolute.

**Common Pleas.**

*Stroud v. Watts.* Easter Term, 1846,

WRIT OF INQUIRY BEFORE UNDER-SHERIFF.—SIGNATURE TO CERTIFICATE UNDER 3 & 4 VICT. C. 24.

*In an action for a malicious prosecution, where the writ of inquiry is in the usual way directed to the sheriff, but the execution thereof takes place before the under-sheriff, the certificate endorsed under the 3 & 4 Vict. c. 24, and signed in the name of the sheriff is sufficient.*

In this case a rule had been obtained calling upon the defendant to show cause why the sheriff's certificate, given in pursuance of 3 & 4 Vict. c. 34, s. 2, and the Master's allocatur thereon, should not be set aside, and why the Master should not review his taxation. The writ of inquiry in the action had been executed before the under-sheriff of Wilts, the cause of action being a malicious prosecution, and the defendant having suffered judgment by default. On the return made in the usual way in the name of the sheriff, there was a certificate to the effect that the grievance within complained of was wilful and malicious, and this was signed by the sheriff and not the under-sheriff, before whom as presiding officer the verdict had been obtained.

Sir Thomas Wilde showed cause. It is quite clear that the writ of inquiry here was well executed, as the under-sheriff was merely the representative of the sheriff and presiding for him; and the return of the requisition is accordingly in the name of the sheriff only, and properly so. *Bac. Abr. Sheriff*, H. 3.



In contemplation of law the sheriff presided, and therefore the certificate ought to be in his name. The case of *Reg. v. Dunn*, 1 Car. & Kir. 730, may be considered as an authority for that.

*Byles*, Sergeant, contra. The under-sheriff has a distinct judicial capacity. In Lord Denman's act the power to certify where the verdict is for a less sum than 40s. and in 3 & 4 W. 4, c. 42, s. 18, giving the power to stay execution by a certificate, the sheriff's deputy is distinctly empowered. The present act too refers to the "judge or presiding officer before whom the verdict shall be obtained," and the fact of the return having been properly made in the name of the sheriff can make no difference, as the certificate is no part of the record. *Reg. v. Dunn* as an authority, can have no effect in this case.

*By the Court.* The writ of inquiry is directed to the sheriff, and the inquisition is to be returned by him. This appears clear from the statute 12 Edw. 2, c. 5, and the authority of Plowden, 62 a. The undersheriff exercises throughout the authority of the sheriff, and there is no reason why he should sign his own name rather than that of the sheriff; and upon the proper construction of the 3 & 4 Vict. c. 24, we think the certificate quite sufficient, and that the rule ought to be discharged with costs.

Rule discharged with costs.

#### DISTRINGAS. — SERVICE OF THE WRIT OF SUMMONS.

*Wilson v. Gunton.* Trinity Term, 1846.

*In order to obtain a distringas to compel an appearance, it must appear in the affidavit, that the copy of the writ of summons was left at the defendant's place of residence on the last occasion of calling.*

*Manning*, Sergeant, applied in this case for a writ of *distringas* to compel the defendant's appearance. The affidavit on which he moved was in the usual form, except that it stated a copy of the writ of summons to have been left at the defendant's place of residence when the first call was made, and then only.

*By the Court.* It is necessary that the copy of the writ of summons should be left on the last occasion of calling, as was decided in the case of *Hill v. Maule*, 1 C. & M. 617, 2 Dowl. 10, and therefore in the present case there must be a re-service before a *distringas* can be successfully applied for.

Writ refused.

#### Eschequer.

*Henry v. Goldney.* Trinity Term, 3rd June, 1846.\*

#### PROVISIONAL COMMITTEE-MEN. — JOINT CONTRACTORS. — PLEA IN ABATEMENT.

*In an action against one of several joint contractors, the defendant cannot plead in abatement the pendency of another action against*

*another joint contractor. But he should first plead the nonjoinder of the co-contractor, and if a second action be brought against both, the pendency of the other action may be pleaded.*

**ASSUMPSIT.**—The declaration contained counts for work and labour, money paid, and money due on an account stated. The defendant pleaded in abatement, that the promises in the declaration mentioned were made by the defendant jointly with one Eady, and that at the time of the commencement of this action the plaintiff had sued out a writ of summons and declared against Eady for the same identical causes of action. To that plea there was a demurrer.

*Crompton* in support of the demurrer. The plea is bad in substance. The principle on which the pendency of another suit is allowed to be pleaded is, that "no one ought to be twice vexed for the same cause." *Sperry's case*, 5 Co. 61. But the present defendant is a stranger to the former action, and therefore it is no answer to say that an action is brought against him for the same cause. *Comyn's Digest* Abatement, (H 24.) The defendant might have pleaded the nonjoinder of Eady in abatement, and then if a second action had been commenced against the two, the tendency of the former action against Eady would have been a good plea.

The court called on

*Brampell* to support the plea. Unless the plea be allowed, a plaintiff might recover his debt twice over. In this case no less than thirty separate actions have been commenced against different provisional committee-men. (*Pollock*, C. B. If judgment was obtained in any one suit, that judgment might be pleaded in bar to the other actions, or the court would give relief on motion or by *audita querela*.) The judgment might be given at such a time as to prevent it from being pleaded. The principle on which the case of *King v. Howe*, 31 L. Q. 331, 13 M. & W., was decided applies here. In *Boye v. Bayliffe*, 1 Camp. 58, Lord Ellenborough ruled, that if two persons commit an assault, and separate actions are brought against each, the pendency of the one suit may be pleaded in abatement of the other. Where two writs of *quare impedit* were brought by the same plaintiff against the same bishop, the pendency of the one suit was held a good plea in abatement of the other. *Hobart*, 137.

In *Rawlinson v. Orist*, 1 Shower 75, *Holt*, C. J., says, "The reason why another action pending shall abate the subsequent action is because of the double vexation." The 3 & 4 Will. 4, c. 42, s. 8, enacts, that a plea in abatement for nonjoinder of a co-defendant shall not be allowed, unless the plea states that such

cannot be pleaded in abatement by another, yet if the plaintiff should obtain judgment in the one action before the other is tried, the defendant in the latter may plead in bar *puis darrein continuance* the judgment in the other action.

\* It should be observed that though the pendency of an action against one joint-contractor

person is within the jurisdiction, so that if the present plea is not allowed, the consequence would be that every joint contract would become a separate contract, if any one of several joint contractors happened to go for a short time abroad.

*Pollock, C. B.* The plea is bad. In the case of a joint and several bond, the obligee may bring separate actions against each obligor, but he can only once recover the debt. The case *Boyce v. Bayliffe* is no authority in support of this plea. What was there said by Lord Ellenborough was a mere casual remark having no reference to the matter before the court. Torts are always joint and several, and all tortfeasors may be sued together, or separate actions may be brought against each. If a plea like the present were good in an action on a tort, I admit it would be good in an action on a contract. But there is neither authority nor precedent for such a plea. In the case cited from Shower, Lord Holt seemed to doubt if when an action was brought against two defendants, they could plead in abatement the pendency of another against one of them, but there is no reason to suppose that in the case of separate actions against two persons for the same cause, the doctrine of "*nemo bis vexari pro eadem causa*" would apply. The person who is first sued may plead in abatement the nonjoinder of the others, and by that means get all the parties before the court, and then if there are other separate actions against them the pendency of those actions may be pleaded. Such was the state of the law prior to the 3 & 4 W. 4, c. 42, s. 8, which prevents a plea in abatement, unless the party not joined is within the jurisdiction of the court. It is urged by the defendant, that because that statute passed we are to mould the rules of pleading so as to prevent injustice. It appears to me that the statute has no reference to the rules of pleading, its only object being to remove an impediment in the way of a plaintiff proceeding with his suit. If, as suggested, the effect of that statute is to make joint contracts several contracts in cases where parties are out of the kingdom, I do not know that any very great mischief is done, because, upon application to the equitable jurisdiction of the court, it would prevent injustice. Upon these considerations, I decide this case upon the principle that the statute 3 & 4 W. 4, c. 42, has nothing to do with the question; that it operates in no way to alter the rules of pleading as established before that statute, when the regular course would have been to bring all joint contractors before the court, and then to have pleaded the pendency of another action against one of them. This plea seems to me to be founded on a right to plead in abatement, yet it is wanting in several matters in respect of which alone a plea in abatement can be maintained, namely, that the co-contractor is alive, and within the jurisdiction of the court.

*Alderson, B.* The principle upon which the plea of another action pending is allowed, is that the same person is not to be twice vexed for the same cause. How does this plea raise

that point? The defendant pleads that *A. B.* is jointly liable with him on the contract, and that *A. B.* has been sued, and that action is pending against *A. B.* But how does that show that the present defendant is, or necessarily will be, twice vexed for the same cause? We must assume that the contract, as stated on the record, was made jointly with Eady. Then the defendant had a right to plead in abatement the nonjoinder of Eady, and the plaintiff could only succeed by bringing a joint action against the defendant and Eady, and then Eady might plead in abatement that another action was pending against himself, for in that case there would be a double vexation for the same cause. For these reasons, without saying any more on other points, I think the plea is bad.

*Rolfe, B.* The case must be considered independently of the late statute. When two persons entered into a joint contract and one alone was sued, the proper course was to plead the nonjoinder in abatement. That enabled the plaintiff to discontinue that action and commence a fresh action against all. The 3 & 4 W. 4, c. 42, proceeds on the assumption that the practice was inconvenient, and in order to remedy it, the statute requires that the plea should state that the party not joined is within the jurisdiction. I confess it seems to me a strange proposition to argue from all this that there must have been before the statute some other mode of relief, besides such plea in abatement, as to which the books are silent. I see no injustice worked by the statute, for a party may get rid of the difficulty by paying his debt. The only difficulty I felt has been from the principle of the decision of this court in *King v. Hoare*, but that proceeded on the ground that the cause of action had passed in *rem judicatam*, and such judgment would be a plea in bar, not in abatement to another action against a co-contractor.

*Platt, B.*, concurred.

Judgment of *respondens ouster*.

## CHANCERY CAUSE LISTS.

After Trinity Term, 1846.

### Lord Chancellor.

#### APPEALS.

Day to be fixed	Strickland Ditto Ditto	Strickland Boynston Strickland	} appeal
To fix a day.	Vandeleur	Blagrave	
To fix a day.	Coore	Lowndes	
To fix a day.	Minor	Minor	} 2 appeals suppl. suit
To fix a day.	Ditto	Ditto	
To fix a day.	Dalton	Hayter	appeal
To fix a day.	Attory-Gen.	Masters & Wardens, &c. of the City of Bristol.	} appeal
	Black	Chaytor do.	
	S. O. Johnson	Reynolds fur. dirs. by order	

Watts	Lord Eglinton	appeal
Curson	Belworthy	do.
Watson	Parker	do.
Dietrichson	Cabburn	do.
Bellamy	Sabine	do.
Attorney-Gen.	Malkin	cause by order
S. O. Johnson	Child	appeal
Kidd	North	do.
Dord	Wightwick	do.
Moleaworth	Howard	do.
Carmichael	Carmichael	do.
Hawkes	Howell	do.
Heming	Swinnerton	do.
Trail	Bull	do.
Youde	Jones	do.
Wrightson	Macauley	do.
Lawrence	Bowle	cause by order
Gomperts	Gomperts	3 causes appeal
{ Morris	Howes	} appeal
{ Horsman	Abbey	
Thomas	Blackman	do.
Bonds	Slyman	do.
Cooper	Pitcher	do.
Salkeld	Johnson	on eqy. read.
Booth	Creswicke	appeal
Forbes	Leeming	do.
Andrews	Lockwood	do.
Stocker	Dawson	4 causes, do.

## Vice-Chancellor of England.

## PLEAS, DEMURRERS, CAUSES, AND FURTHER DIRECTIONS.

{ Hiles v. Moore	
{ Ditto v. Gleadow	
Bell v. Earl of Mexborough, dem.	
Sandere v. Kelsey, dem.	
Colombine v. Chichester, 3 dems.	
Moore v. Mitchell, 2 dems.	
Strange v. Brennan, demr.	
Goodman v. De Beauvoir, petition, 2 dems.	
Johnson v. Forrester, fur. dirs.	
Henderson v. Eason, exons. and fur. dirs. and petition.	
Terry v. Wachter.	
Simpson v. Holt, fur. dirs. and costs.	
Garrad v. Moor.	
{ Smale v. Bickford.	
{ Bickford v. Bickford.	
Peacock v. Kernot.	
Morrison v. Watkins.	
Wright v. Barnewell, exons. and fur. dirs.	
Greenway v. Buchanan.	
Walton v. Morritt.	
Dobson v. Lyle, fur. dirs. & costs.	
Parker v. Hawkes, exons.	
Davison v. Bagley.	
Penny v. Turner.	
Giffard v. Withington.	
Daniel v. Hill.	
Insole v. Featherstonhaugh.	
Lane v. Durant, exons. and fur. dirs.	
Pocock v. Johnson.	
Cope v. Lewis.	
Evans v. Hunter.	
Attorney-Gen. v. Trevelyan.	
Start v. Cooke.	
Blundell v. Gladstone, 4 causes, fur. dirs.	
Hodgkinson v. Barrow, fur. dirs. and costs.	
Colbourn v. Coling	
Langton v. Langton, 2 causes.	
Gowar v. Bennett, fur. dirs.	
Hickson v. Smith, at def.'s request.	
Palmer v. Pattison fur. dirs. and costs.	

Minter v. Wraith, fur. dirs. and cause.
Mason v. Wakeman, exons.
Hemming v. Spiers, exons.
Chambers v. Waters, exons.
Lord Beresford v. Archbishop of Armagh, fur. dirs. and costs.
Smith v. Robinson.
Foster v. Vernon, fur. dirs. and costs.
Johnstons v. Lamb, ditto.
Vale v. Sherwood, 7 causes, ditto.
Haffenden v. Wood, exons.
Branscomb v. Branscomb, fur. dirs. and costs.
{ Stammers v. Halliby, 3 causes, fur. dirs.
{ Ditto v. Battye, by order,
Gray v. Gray, 3 causes, fur. dirs.
Dorville v. Wolff, fur. dirs. and costs.
Richards v. Patterson, fur. dirs. and costs.
Adlam v. Barham, 2 causes.
Beatson v. Beatson.
Woodman v. Madgen, fur. dirs. and costs.
Attorney-Gen. v. Pearson, exons. and fur. dirs.
Short, Cradock v. Piper, fur. dirs. and costs.
Dawson v. Chappell, fur. dirs. and costs.
Andrew v. Moore ditto.
Wait v. Horton ditto.
Montague v. Cator, fur. dirs. and causes.
Groom v. Stinton, 4 causes.
Elliott v. Elliott.
Short, Corbett v. Limbrick, fur. dirs. and costs.
Baxter v. Abbott, fur. dirs. and costs.
De Beauvoir v. De Beauvoir, fur. dirs. and costs.
Beale v. Warder, rehearing.
Turner v. Simcock, fur. dirs. and costs.
Booth v. Lightfoot, fur. dirs. and costs.
Ludlow v. Guilleband, fur. dirs. and costs.
Af. M. T. Attorney-Gen. v. East India Company.
Roberts v. Cardell, exons.
Cook v. Fynney.
Flight v. Bushby.
Warwick v. Richardson, exons. and fur. dirs.
Morgan v. Kingdon, fur. dirs. and costs.
Lewis v. Hinton, fur. dirs. and costs.
Wilson v. Williams.
Burnett v. Mackenby.
Robotham v. Amplett, exon.
Poole v. Troughton.
Ellison v. Clark.
Milroy v. Milroy, fur. dirs. and costs.
Bailiff, &c. of Bridgnorth v. Colins, fur. dirs. and costs.
{ Gaches v. Warner.
{ Ditto v. Pilkington.
Flight v. Camac.
Raymond v. Croke, fur. dirs. and costs.
Lambier v. Buck, fur. dirs. and costs.
Short, Trant v. Doffell with petn.
Birch v. Jay, fur. dirs. and costs.
Short, Attorney-General v. Frank, fur. dirs.
Bilton v. Frewheala.
Paxton v. Humble, fur. dirs.
Atkinson v. Glover.
Pulley v. Artheridge, fur. dirs.
Wilson v. Jones, exons.
Short, Bishop v. Bishop.
Spence v. Perrin, fur. dirs. & costs.
Wall v. Essington.
Edwards v. Priestly.
Mayor, &c. of Rochester v. Lee
Day v. Slade.
Pennyfather v. Pennyfather, 2 causes.

## Vice-Chancellor Knight Bruce.

## CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Chapuk v. Appleton, objection as to parties.

Esdaile v. Molynaux, ples.  
*Michaelmas Term*, Dodsworth v. Lord Kinnauld,  
 at request of deft.; Ditto, Same v. Same.  
 30th June, Taylor v. Taylor.  
 Middleton v. Wolf.  
 27th July, Coton v. Rideout.  
 1st July, Malins v. Price.  
 Sowden v. Marriott, 2 causes.  
 Langdon v. James, pt. hd.  
 Attorney-Gen. v. Pearson.  
 Attorney-Gen. v. Berry.  
 Helliwell v. Briggs, 2 causes.  
 Hanbury v. Ward.  
 Querrill v. Binnimons, fur. dirs. and costs.  
 Butcher v. Rich ditto.  
 Caledonian In. Co. v. Gfbb.  
 Attorney-Gen. v. Montefiore.  
 Warner v. Pearce.  
 { Gawen v. Gawen, exons.  
 { Ditto v. ditto, fur. dirs and costs.  
 Wilkinson v. Garrett.  
 Craven v. Stubbins.  
 Brendon v. Brandan.  
 Garrard v. Tuck.  
 Richards v. Richards.  
 Phillips v. Hunt, fur. dirs. and costs.  
 Quirk v. Clayton.  
 Culver v. Haynes, 2 causes.  
 Norris v. Norris.  
 { Craik v. Lamb } fur. dirs. and  
 { Ditto v. Hobson } costs.  
 Sutherland v. Sutherland.  
 Brendon v. Brendon.  
 S. O., Thomas v. Brennan.  
 Hyams v. Fitch.  
 Exher v. Feet.  
 Gibbs v. Waters.  
 May v. Cooke.  
 Attorney-Gen. v. Glasgow College.  
 Wynne v. Styan.  
 Dyer v. Crick.  
 Barry v. Marriott.  
 Griffith v. Pugh.  
 Wagstaff v. Crosby.  
 Massey v. Johnson.  
 Short, Wakefield v. Foster.  
 Flight v. Marriott.  
 Hulbert v. Hulbert.  
 { Sowerby v. Pontop Railway Company.  
 { Ditto v. ditto.  
 Sabire v. Callbeck.  
 Croxton v. Croxton.  
 Smith v. Barneby.  
 Short, Ash v. Lysall.  
 Sewall v. Alexander.  
 Hales v. Grinfield.  
 Cooper v. Aylmore, exons. and fur. dirs.  
 Taylor v. Cooper.  
 Trumper v. Hodges, exons.  
 Wilson v. Parker.  
 Farrs v. Crosby, fur. dirs. & costs.

Vice-Chancellor Williams.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Ward v. Key.  
 Gibson v. Lago.  
 Garth v. Maclean.  
 S. O., Lowes v. Lowes, fur. dirs. & costs.  
 Western v. Wood, exons. 4 sets.  
 Sayer v. Lacon, exons. and fur. dirs.  
 Edye v. Hunter.  
 Walker v. Sharpe.  
 Barch v. Western, exons.

Short, Harrison v. Harrison, fur. dirs. and costs.  
 Harrison v. Standen.  
 Franks v. Bains.  
 Davies v. Herbert.  
 Rase v. Morrell, exons. and fur. dirs.  
 Wild v. Woodyear.  
 27th { Dugdale v. Johnson }  
 June { Ditto v. Pury }  
 Ditto, Lander v. Ingersoll.  
 2nd July, Pottel v. Sanders.  
 4th July, Bostock v. Lee.  
 Short, Morrison v. Martin.  
 10th July, Attridge v. Lewin.  
 Sutcliffe v. Banks.  
 Packham v. Gregory, fur. dirs.

Causes transferred by order of the Lord Chancellor.

Ford v. Wastall.  
 Woods v. Woods, 5 causes.  
 Webb v. Gower.  
 Bagshaw v. Macneil.  
 Waugh v. Waugh.  
 Tufnell v. Drever.  
 Farris v. Loosemore, 2 causes.  
 Short v. Kemp.  
 Ashton v. Higginbottom, 2 causes.  
 Maitland v. Rodger, 2 causes.  
 Plowden v. Thorpe.  
 Worne v. Gelding.  
 White v. Thorndell.  
 Major v. Major.  
 Pinkey v. Remmett.  
 East India Company v. Coopers' Co.  
 Baker v. Bayldon.  
 De Visne v. Graham.  
 Baker v. Wetton.  
 De Sola v. Meenard.  
 Campbell v. London and Brighton Railway Co.  
 Stephens v. Green.  
 Jeasop v. Jeasop.  
 M'Dermot v. Wilcox.  
 Blair v. Bromley.  
 Burt v. Burnham.  
 Nicholson v. Locke, 2 causes.  
 Dolland v. Reed.  
 Duncombe v. Levy.  
 Dell v. Dell.  
 Fraser v. Jones.  
 Faulding v. Newborn, 2 causes.  
 Leigh v. Earl Balcarras.  
 Dale v. Hamilton.  
 Bostock v. Shaw.  
 Emerson v. Emerson.  
 Hammon v. Sedgwick.  
 Warner v. Hodgson, 2 causes.  
 Kirby v. Mash.  
 Pennington v. Buckley.  
 Tapperell v. Taylor.  
 Parks v. Odill, 2 causes.  
 Carlisle v. Elliott.  
 Handford v. Handford.  
 Maxwell v. Kibblethwaite, 2 causes.  
 Tarte v. Phillips.  
 Dyneley v. Dyneley, 2 causes.  
 Porter v. Porter.  
 Scott v. Bealey.  
 Starky v. Blake.  
 Tolson v. Dykes, 3 causes.  
 Ogle v. Hansard, (last transferred cause).  
 Knight v. Knight, exons. 2 sets.  
 Lewis v. Thomas.  
 Lewis v. Clark.  
 Bell v. Alexander.  
 Short, Bull v. Pritchard.  
 Dobson v. Land.  
 Connell v. Luke.

# MASTERS EXTRAORDINARY IN CHANCERY.

*From May, 26th, to June 19th, 1846, both inclusive, with dates when gazetted.*

Channing, Henry, Taunton. June 16.  
 Conington, James William, Honoacastle. June 19.  
 Peake, Henry, Sleaford. June 9.  
 Phillips, John, Hastings. June 5.  
 Reeves, John Frederick, Taunton. June 16.  
 Smith, Alexander Blucher, Melksham. June 9.  
 Wood, John Richard, Woodbridge. June 5.

# DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From May 26th, to June 19th, 1846, both inclusive, with dates when gazetted.*

Casterton, William, and Frederick Seekamp Dixon, 1, Angel Court, Throgmorton Street, Attorneys and Solicitors. June 12.  
 Currey, Benjamin, Wilmer Wilmer, and William Currey, Old Palace Yard, Attorneys and Solicitors. June 16.  
 Humphrys, George, Archibald Keightley, William Parkin, Robert Cunliffe, and Henry Arthur Beaumont, 43, Chancery Lane, Attorneys and Solicitors. June 12.  
 King, John, and Davis Porter King, Buckingham, Attorneys and Solicitors. May 26.  
 Mant, Henry John, and Henry James Harvey, Bath and Box, Attorneys, Solicitors, and Conveyancers. June 2.  
 Palmer, Hanslip and William Sudlam Ollard, Upwell, Attorneys and Solicitors. June 12.  
 Whitelock, John, and Charles Moultrie, 70, Aldermanbury, Attorneys and Solicitors. June 12.

# PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

## House of Lords.

### NEW BILLS.

Recovery of Small Debts and Demands in England.—For 2nd reading. The Lord President of the Council.

Juvenile Offenders. For 2nd reading. Marquis of Westminster.

Real Property Conveyance.—Passed. See the bill pp. 50, 70, *ante*. Lord Brougham.

Judgment Creditors.—For 2nd reading. Lord Brougham.

Administration of Criminal Justice.—For consideration of Commons' Amendments.

General Registration of Deeds.—Lord Campbell. Deferred until the Corn Bill has passed.

Religious Opinions Relief.—Re-committed. Lord Chancellor.

Correction of Clerks (Church Discipline). For 2nd reading. Bishop of London.

Punishment for deterring Prosecutors, Witnesses, &c.—In Committee. See the bill, 31 L. O. 472. Lord Denman.

Metropolitan Buildings.—For 2nd reading. See the bill, 31 L. O. 436.

Railway Companies Dissolution.—For 3rd reading. Lord Dalhousie.

Railway Deposits.—In Committee.  
 Insolvent Debtors' Act Amendment.—Passed. Lord Brougham.  
 Commons Inclosure. For 3rd reading.  
 Vexatious Actions Protection.—For 2nd reading.  
 Game Laws.—To be reported.  
 Small Debt Courts:  
 St. Austell. In Committee.  
 Birkenhead. In Committee.

## House of Commons.

### NEW BILLS.

Bankruptcy and Insolvency.—In Committee. See the bill, 31 L. O. 569. Mr. Hawes.

Roman Catholics' Relief.—Re-committed. See the bill, p. 402, *ante*. Mr. Watson.

Small Debts Court:  
 Somerset. 2nd reading,  
 Northampton.

Poor Removal.—Re-committed. Sir J. Graham. See analysis of the bill, 31 L. O. 473.

Highway Laws Amendment.—For 2nd reading. Sir James Graham.

Corresponding Societies, Lectures, &c. Mr. T. S. Duncombe.

Metropolis Interments.—Mr. Mackinnon.

Death by Accidents Compensation. For 2nd reading, 8th July.

Deodands Abolition. Mr. Bouverie.

Total Abolition of the Punishment of Death. Mr. Ewart.

County Rates. For 2nd reading.

Administration of Justice at Quarter Sessions.—For 2nd reading. Mr. Frewen.

Parliamentary Electors.—Negotiated.

Charitable Trust Accounts.—For 2nd reading. Mr. Hume.

### RECORD OFFICE.

On the motion of Mr. C. Buller, a select committee has been appointed "to consider the best means of providing a general Record Office for England and Wales." We trust the committee will select the site of the present small and insufficient courts, and thus lead to their removal and enlargement.

## THE EDITOR'S LETTER BOX.

WE have received the memoir of the late Mr. Brockett of Newcastle-upon-Tyne, and shall avail ourselves of it during the vacation.

We must reluctantly decline answering the case of our lay-reader at Halifax, and beg to refer him to a solicitor. Though willing to consider questions of professional usage and matters of practice, we cannot undertake the responsibility of giving an opinion on cases which ought to be investigated and considered by our professional brethren.

We are obliged by the Railway Questions submitted to a learned Queen's counsel and his answers, and hope to insert them in our next number.

# The Legal Observer.

SATURDAY, JULY 4, 1846.

— "Quod magis ad nos  
Pertinet, et noscere malum est, agitamus."

HORAT.

## CHANGE OF MINISTRY AND THE GREAT LAW OFFICERS OF THE CROWN.

We eschew Politics in general. The change of a Chancellor of the Exchequer or a Secretary of State may take place unrecorded in our pages; but the resignation of a Prime Minister, usually, as in the present instance, involves that of the Lord High Chancellor both of England and Ireland, and of the Attorney and Solicitor-General of both parts of the empire. It is more also within our province to notice the resignation of Sir Robert Peel's administration, inasmuch as it is connected with the all-important law relating to the Importation of Corn which has just *passed*, and the not unimportant law relating to the protection of Life and Property in Ireland, which has just been *rejected*. Into the merits of neither question is it our duty to enter. We have to look only at the probable consequences of the change on the due administration of justice and the fair and honourable interests of our professional brethren.

The resignation was tendered to her Majesty at the Isle of Wight, on Saturday the 27th June, and accepted.

Before we close this article, we shall probably be able to announce the actual appointment at least of the *Law* part of the administration. In the mean time there can be no doubt that Lord John Russell being the Prime Minister, Lord *Cottenham* will be Chancellor of England, and Sir Thomas *Wilde* the Attorney-General. The filling up of the appointment of Solicitor-General is not so clear.\*

Although there may be several reasons, on general grounds, for regretting this change, and the circumstances which produced it, we cannot but acknowledge that it is accompanied by several consolatory considerations in reference to the prospective interests of the profession. We have always, in common with our brethren at large, duly appreciated the eminent judicial qualities of Lord *Cottenham*, and his Lordship has very recently demonstrated his regard for the abused, but (with all its defects) the excellent system of equity administered in the Court of Chancery. We may look, therefore, for measures which, without lopping off any branches of its jurisdiction, may render the courts more efficacious. The ill-considered and hasty alterations of the law which have been of late permitted, will, we trust, be stopped, and more practical and useful amendments effected. We also trust, that the important proposition for the removal of the courts will proceed as it did before, under the sanction of Lords *Cottenham* and *Langdale* and Sir Thomas *Wilde*. These and other good results we are inclined to augur from a change, which in other respects may be lamented.

The legal arrangements according to the latest report, are—

Lord Chancellor: Lord *Cottenham*.

Chancellor of the Duchy of Lancaster: Lord *Campbell*.

Attorney-General: Sir Thomas *Wilde*.

Solicitor-General: Mr. *Jervis*.

### IN IRELAND

Lord Chancellor: Chief-Baron *Brady*.

Attorney-General: Mr. *Moore*.

Solicitor-General: Mr. *Monahan*.

\* Mr. *Jervis*, Mr. *Romilly*, Mr. *Dundas*, and Mr. *Serjeant Talfourd*, have each been  
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named in the legal circles as expected to be Solicitor.

## PROPERTY LAWYER.

RELATION OF LANDLORD AND TENANT.—  
SURRENDER BY OPERATION OF LAW.

THE law arising out of the relation of landlord and tenant, involves interests so extensive and permanent, that any decision which throws any new light on it, may be deemed of some importance. A case of this nature is to be found in the last number of the Reports of the Court of Exchequer.\*

The facts were shortly as follow:—William Hull occupied some premises in the county of Surrey, as tenant to Lady Hotham, under a lease which terminated in 1831, but continued in possession, paying rent to Lady Hotham up to August 1842, when he died. The widow of William Hull continued to occupy the premises after his death, and up to Christmas 1844, paying rent to Lady Hotham. John Hull, the father of William Hull, took out letters of administration to his deceased son in March 1844, but neither demanded nor received any rent for the premises in question. In October 1844, the widow married one Henry Wood, who paid one quarter's rent to Lady Hotham subsequent to his marriage. In February 1845, John Hull, the administrator of his deceased son, demanded possession of the premises, and upon Wood's refusal to deliver up possession, brought an action of ejectment, laying the demise on the 28th of February 1845.

A verdict having been taken for the plaintiff, with leave to move to enter a nonsuit, a rule was moved for accordingly, and it was argued on behalf of the defendant Wood,—1st, That the widow became tenant from year to year to Lady Hotham with the privity of the administrator, who was the present lessor of the plaintiff; for although it was conceded that the tenancy from year to year, which belonged to William, would have passed to John as administrator, yet it was submitted that from the circumstances a surrender by operation of law must be implied. 2ndly, it was submitted, that if the relation of landlord and tenant did not exist between the widow and Lady Hotham, the payment of rent to Lady Hotham with the consent of the administrator, was virtually a payment to him, and created a tenancy from year to year as between the widow and the administrator, which entitled the former to a six months' notice to quit.

*See D. Hull v. Wood, 14 Mees. & W. 682.*

Both the points raised in the argument on behalf of the defendant, were fully disposed of by the judgment of the court. It was said to be perfectly clear, that on taking out administration John Hull might have recovered possession of the premises, and the only question therefore was, whether he had done anything to divest himself of that right. All that John Hull had done after he became administrator, was to permit matters to go on as before, but no agreement for an under-tenancy from year to year, between the administrator and the occupier could be presumed from these facts, and it could not be contended, that the administrator lost his right because he did not take out administration for eighteen months or two years. The tenancy from year to year was a term which vested in the administrator, and the onus of showing a legal determination of it rested on the defendant; but he had failed to show that the tenancy had been determined by operation of law or otherwise.

*Parke, B.*, observed, that the law was correctly laid down in *Richardson v. Langridge*,<sup>b</sup> that a simple permission to occupy created a tenancy at will, unless there were circumstances to show an intention to create a tenancy from year to year; as, for an instance, an agreement to pay rent by the quarter or some aliquot part of a year, which did not exist in this case.

Upon these grounds the verdict taken for the administrator, as lessor of the plaintiff, was sustained, and the rule enter a nonsuit refused.

LAW OF  
ATTORNEYS AND SOLICITORS.ATTORNEY PRIVILEGE TO BE SUED IN  
HIS OWN COURT, WHEN LOST.

THE privilege of an attorney to be sued in his own court, is not affected by any of the modern changes in the law;<sup>c</sup> but it is still qualified by the ancient rule, that if an attorney be sued with another person, who has not the same privilege, he loses his privilege. The reason for this limitation is stated by *Heath, J.*, in *Roberts v. Mason*,<sup>d</sup> to be, that if an attorney sued with another did not lose his privilege,

\* 3 Taunt. 128.

<sup>c</sup> *Pitt v. Pooock*, 2 C. & M. 146; *Lewis v. Kerr*, 2 M. & W. 226; and *Prior v. Smith*, 6 Dowl. 299.

<sup>d</sup> 1 Taunt. 254.

"there must be two actions instead of one." The rule, it seems, however, still exists, even in cases where this reason does not apply, as exemplified in a late case, which was argued and decided on demurrer in the Court of Common Pleas.\* In that case three defendants were sued in assumption, for work and labour, and the defendant, George Arthur Dye, pleaded in abatement, that he and his co-defendants were attorneys of the Court of Queen's Bench, to which the plaintiffs replied, that Kitton, one of the defendants, was an attorney of the Court of Common Pleas, in which the action was brought; and the defendant Dye rejoined by again averring, that his co-defendant Kitton was an attorney of the Queen's Bench. To this rejoinder there was a special demurrer, which was argued chiefly on the ground, that Kitton being an attorney of the Court of Common Pleas as well as of the Queen's Bench, was not privileged to be sued in the Queen's Bench only, and that the defendant Dye, being sued in this action jointly with others, could not avail himself of any privilege not claimed by his co-defendants.

In support of the demurrer it was submitted, that an attorney was not entitled to the privilege of being sued in the court of which he is an attorney, when co-defendant with another attorney, who was properly sued in the court where the action was brought, and the case was likened to that of an attorney sued in right of another as executor, or with his wife for a debt due from her *dum sola*.<sup>†</sup> On the other hand it was admitted, that the rule was formerly as stated in support of the demurrer, but that the reason of the rule was, that under the old system an attorney when sued alone must be sued by bill; but that as the Uniformity of Process Act (2 Wm. 4, c. 39), abolished the proceeding by bill, the reason no longer existed, for disallowing an attorney his privilege when a co-defendant with an unprivileged person.

In the course of the argument, *Tindal*, C. J., observed, that the precise reason for the rule as stated by *Heath*, J., in *Roberts v. Mason*, certainly did not apply in the present case, as here there would be no necessity to bring an action against the

defendants in two courts, inasmuch as all three defendants were attorneys of the Queen's Bench. The court, however, was unanimously of opinion, that the old rule, that a privileged person sued with an unprivileged person loses his privilege, was not altered by the operation of the Uniformity of Process Act. Here it was clear, that the defendant Kitton being an attorney of this court had no privilege to remove the suit into the Court of Queen's Bench; and it would be a singular state of things if the other defendants should be able to remove it; if the defendant Dye might remove the suit into the Court of Queen's Bench, on the ground of his being an attorney of that court, why might not the defendant Kitton bring it back to the Court of Common Pleas, upon the ground of his being an attorney of that court? If the rule, as contended for on behalf of the defendant, were to take effect, the result would be, that if an action were brought against two attorneys, one being an attorney of the Court of Queen's Bench and the other an attorney of the Court of Common Pleas, each might suspend the action at pleasure. For these reasons the court thought, that the defence set forth in the plea, could not be sustained, and gave judgment accordingly, of *respondent ouster*.

#### THE GOVERNMENT SMALL DEBTS BILL.

THIS bill is intitled "An Act for the more easy Recovery of Small Debts and Demands in England." It recites, that sundry acts of parliament have been passed from time to time for the more easy and speedy recovery of small debts within certain towns, parishes and places in England.

That by 7 & 8 Vict. c. 96, arrest upon final process in actions of debt not exceeding 20*l.* was abolished, except as to certain cases of fraud and other misconduct of the debtor therein mentioned.

That by the 8 & 9 Vict. c. 127, further remedies were given to judgment creditors, in respect of debts not exceeding 20*l.*, for the discovery of the property of debtors, and punishment of frauds committed by them.

That by the last-mentioned act her Majesty is enabled, with the advice of her privy council, to extend the jurisdiction of certain courts of requests and other courts for the recovery of small debts to all debts and demands, and all damages arising out of any express or implied agreement, not exceeding 20*l.*, and also to enlarge and in certain cases to contract the district of such courts, and make certain other alterations in the practice of such courts, in manner in the now reciting act mentioned;

\* *Rastrick v. Beckwith, Dye and Kitton*, 7 M. & G. 905.

<sup>†</sup> Citing *Bac. Abg. tit. Privilege*, B. 3; *Branthwaite v. Blackerley*, 2 Salk. 544; 12 Mod. 163, and *Newton v. Harland*, 4 B. N. C. 406; 6 Sc. 186; 6 Dowl. 630.



and it is expedient that the provisions of such acts should be amended, and that one rule and manner of proceeding for the recovery of small debts and demands should prevail throughout England.

That the county court is a court of ancient jurisdiction, having cognizance of all pleas of personal actions where the debt or damage is under the sum of 40s., and of personal actions to any amount by virtue of a writ of justices issued in that behalf.

That the proceedings in the county court are dilatory and expensive, and it is expedient to alter and regulate the manner of proceeding in the said courts for the recovery of small debts and demands, and that the courts established under the recited acts of parliament, or such of them as ought to be continued, should be holden after the passing of this act as branches of the county court under the provisions of this act, and that power should be given to her Majesty to effect these changes at such times and in such manner as may be deemed expedient by her Majesty, with the advice of her privy council: It is therefore proposed to enact,

1. That it shall be lawful for her Majesty, with the advice of her privy council, from time to time to order that this act shall be put in force in such county or counties as her Majesty, with the advice aforesaid, from time to time shall seem fit; and this act shall extend to those counties concerning which any such order shall have been made, and not otherwise or elsewhere: Provided always, that no court shall be established under this act in the city of London.

2. That it shall be lawful for her Majesty, with the advice aforesaid, to divide the whole or part of any such county into districts, and to order that the county court shall be holden for the recovery of debts and demands under this act in and for any one or more of such districts as to her Majesty, with the advice aforesaid, shall seem fit, and to order from time to time that the number of districts in and for which the court shall be holden shall be increased until the whole of such county shall be within the provisions of this act, and with the advice aforesaid to alter the place of holding any such court, or to order that the holding of any such court be discontinued, or to consolidate any two or more of such districts, and from time to time, with the advice aforesaid, to declare in what towns and places the county court shall be holden in each district; and if it shall appear to her Majesty that any part of any county may conveniently be declared within the jurisdiction of the county court of an adjoining county, it shall be lawful for her Majesty, with the advice aforesaid, to order that such part shall be taken to be within the jurisdiction of the county court holden for the purposes of this act for such adjoining county in and for such district as her Majesty shall order, in like manner as if it were part of such adjoining county.

#### *New Courts.*

2. That every court to be holden under this

act shall have all the jurisdiction and powers of the county court for the recovery of debts and demands, except so far as altered by this act, and there shall be a judge for each district into which such county shall be divided, and the county court may be holden simultaneously in all or any of such districts; and every court holden under this act shall be a court of record.

4. That it shall be lawful for her Majesty, with the advice of her privy council, to order that any court holden for the recovery of small debts or demands within the provisions of any act cited in either of the schedules annexed to this act, and marked (A.) and (B.) respectively, shall be holden as a county court; and it shall be lawful for her Majesty, with the advice aforesaid, to assign a district to every such court, either greater or less than the district in which the court holden under the provisions of any such act now has jurisdiction, and to alter the place of holding any such court, or to order that any such court be abolished; and every such court shall continue to be holden under the act according to which it is now constituted until the time mentioned in any such order which shall be made with reference to such court; and from and after the time mentioned in any such order the act or acts under which such court is now constituted, so far as the same relate to the establishment or jurisdiction or practice of a court for the recovery of small debts or demands, shall be repealed, but not so as to revoke any act thereby repealed: and such court so ordered to be holden as a county court shall thenceforth be holden as a county court under this act, and in all respects as if it had been originally constituted under the provisions of this act.

5. That as soon as a court shall have been established in any district under this act, and also at the time mentioned in any such order which shall have been made as aforesaid for holding any of the courts mentioned in either of the said schedules as a county court under this act, the several provisions and enactments of the said acts of parliament of the eighth and of the ninth year of the reign of her Majesty, and of every other act of parliament heretofore passed, so far as the same respectively relate to or affect the jurisdiction and practice of the court so established or ordered to be holden as a county court, shall be repealed.

6. That all proceedings in execution of the said acts or any of them before the passing of this act, or before the days severally appointed for the alteration of the constitution of the said courts, shall be as valid to all intents and purposes as if this act had not been passed, or as if the said courts had not been altered, and may be continued, executed, and enforced against all persons liable thereto in the same manner as if such proceedings had been commenced under the authority of this act.

7. That any order in council made for the purposes of this act shall be published in the London Gazette.

#### *Judges of the Court.*

8. That every barrister and attorney at law

who shall have been on the 1st day of June in this year the judge or assessor of any court constituted or held under any of the acts cited in either of the said schedules (A.) and (B.), whether by the title of judge or barrister, or county clerk, assessor, or steward, or deputy steward, or by any other title or style whatsoever, and shall continue to hold such office at the time when the act under which any such court is now constituted shall be repealed under the provisions of this act, shall be entitled to be the first judge of the county court, if willing to perform the duties of the said office, for such district as shall be assigned to such court as herein-before provided, instead of the district of the court holden under the act so repealed: Provided always, that every attorney at law who shall become a judge of the county court under this act, and who shall be the partner of any other attorney at law, shall, within six calendar months next after entering on the said office of judge of the county court, dissolve such partnership or vacate the said office of judge, and shall not during his continuance as such judge enter into any new partnership, or practise as an attorney, or be, either by himself or his partner, directly or indirectly concerned as attorney or agent for any party in any proceeding in the said court.

9. That the appointment of any person who at the passing of this act shall hold any of the before-mentioned offices in any such court, to be the judge of such court when holden as a county court, shall not be deemed an appointment to hold a public office or employment within the meaning of 5 & 6 Vict. c. 122, so as to deprive him of any compensation to which he may be entitled under the said act.

10. That in every county in which the number of persons then already appointed and willing to perform the duties of judge of the county court, as herein-before provided, shall be in any county less than the number of districts in which the county court shall have been ordered by her Majesty to be holden in the same county, the *custos rotulorum* of that county, except in the districts herein-after specified, shall appoint as many fit persons as are needed to complete the number to be judges of the county court, subject in each case to the approval of her Majesty, to be signified under the royal sign manual, each of whom shall be a barrister at law who shall have practised as a barrister for at least seven years then last past, or a person filling the office of county clerk in the same county at the time of the passing of this act: Provided always, that every additional judge who shall be needed for any district of which the whole or the greater part is within the jurisdiction of the central criminal court shall be appointed by the Lord Chancellor, and shall be qualified as herein-before provided.

11. That from time to time when any judge appointed or to be appointed under this act shall die, resign, or be removed, and the district for which he was appointed shall not be consolidated with any other district, another judge shall be appointed who shall be a barris-

ter at law who shall have practised as a barrister at law for at least three years then last past, or who shall have been the county clerk of the same county at the time of the passing of this act; and every such appointment shall be made by the Lord Chancellor, or, where the whole or the greater part of the district is within the Duchy of Lancaster, by the Chancellor and Council of the Duchy of Lancaster.

12. That it shall be lawful for the said Lord Chancellor, or where the whole or the greater part of the district is within the duchy of Lancaster, for the Chancellor and Council of the said duchy, if he or they shall think fit, to remove for inability or misbehaviour any such judge already appointed or hereafter to be appointed.

13. That in case of illness or unavoidable absence, the cause whereof shall be entered on the minutes of the court, it shall be lawful for the judge appointed to hold any court under this act, or, in case of the inability of the judge, for the Lord Chancellor, or, where the whole or greater part of the district is within the Duchy of Lancaster, for the Chancellor and Council of the duchy, to appoint some other person, who shall have practised as a barrister at law for at least three years then last past, to act as the deputy of such judge during such illness or unavoidable absence; and it shall also be lawful for the judge, with the approval of the said Chancellor or Chancellor and Council to appoint a deputy, who shall have practised as a barrister at law for at least three years then last past, to act for him for any time or times not exceeding in the whole two calendar months in any consecutive period of twelve calendar months; and every deputy so appointed, during the time for which he shall be so appointed, shall have all the powers and privileges and perform all the duties of the judge for whom he shall have been so appointed.

14. Judges may act as justices if in the commission of the peace.

15. Commissioners of treasury to appoint treasurers.

#### *Clerk of the Court.*

16. That in every district into which any county shall be divided under the authority of this act there shall be a clerk, who shall be an attorney of one of her Majesty's superior courts of common law at Westminster, or the Court of Common Pleas at Lancaster, and whom the judge appointed to hold the court in that district shall be empowered to appoint, and in case of inability or misdemeanour to remove; and until otherwise directed by her Majesty, with the advice of her privy council, every such clerk shall be paid by fees as herein-after provided; and in cases requiring the same such assistant clerks as may be necessary shall be provided and paid by the clerk of the court.

17. That it shall be lawful for the clerk of any such court (with the approval of the judge) to appoint from time to time a deputy, qualified to be appointed clerk of the said court, to act for him in the office of clerk of the said court at any

time when he shall be prevented by illness or unavoidable absence from acting in such office, and to remove such deputy at his pleasure; and such deputy while acting under such appointment shall have the like powers and privileges, and be subject to the like provisions, duties, and penalties for misbehaviour, as if he were the clerk of the said court for the time being.

18. That the clerk of each court, with such assistant clerks as aforesaid in cases requiring the same, shall issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments of the said court, and keep an account of all proceedings of the court, and shall take charge of and keep an account of all court fees and fines payable or paid into court, and of all monies paid into and out of court, and shall enter an account of all such fees, fines, and monies in a book belonging to the court, to be kept by him for that purpose, and shall from time to time, at such times as shall be directed by order of the court, submit his accounts to be audited or settled by the treasurer.

19. That the clerk of the court shall not, either by himself or his partner, be directly or indirectly engaged as attorney or agent for any party in any proceeding in the said court.

20. That every person who; being the clerk of any such court, or the partner of such clerk, or a person in the service or employment of any such clerk or of his partner, shall accept the office of treasurer of such court, or in any manner act for the treasurer, or who, being the treasurer of any such court, or the partner of any such treasurer, or a person in the service or employment of any such treasurer or of his partner, shall accept the office of clerk in the execution of this act, or shall in any manner act for such clerk, and also every clerk of any such court who shall be, by himself or his partner, or in any way, directly or indirectly, concerned as attorney or agent for any party in any proceeding in the said court, shall for every such offence forfeit and pay the sum of 50*l.* to any person who shall sue for the same in any of her Majesty's Courts of Record at Westminster, or in the Court of Common Pleas at Lancaster, by action of debt or on the case.

#### *Miscellaneous Provisions.*

21. Appointment of bailiffs.

22. Duties of the bailiffs.

23. Provision for clerks, bailiffs, and officers of courts of requests.

24. Treasurer, clerk, and officers to give security.

25. Fees to be taken according to schedule.

26. Judges to be paid by salaries not exceeding 1,200*l.* a year.

27. Compensation for persons whose emoluments will be diminished.

28. Salaries may be substituted for fees without compensation.

29. Fees and fines to be accounted for to treasurer.

30. Treasurers to settle clerk's accounts.

31. Treasurer of the court to account.

32. Commissioners of treasury to direct how the accounts shall be kept.

33. Accounts to be audited. 25 G. 3. c. 52.

34. Clerk to send to commissioners of audit particulars of charge.

35. Accounts when audited to be sent to treasury.

36. Treasurer to provide a court house.

37. Prisons for fraudulent debtors may be provided. 5 & 6 Vict. c. 98.

38. Power for purchasing land.

39. Treasurer empowered to borrow money.

40. General fund.

41. Property of certain courts to vest in the treasurer of the county court.

42. Provisions for outstanding liabilities.

43. Clerk to have charge of the courts.

#### *Holding Courts.*

44. That the judge of each district shall attend and hold the county court at each place where her Majesty shall have ordered that the county court shall be holden within his district at such times as he shall appoint for that purpose, so that a court shall be holden in every such place once at least in every calendar month, or such other interval as one of her Majesty's principal secretaries of state shall in each case order; and notice of the days on which the court shall be holden shall be put up in some conspicuous place in the court house and in the office of the clerk of the court, and no other notice thereof shall be needed; and whenever any day so appointed for holding the court shall be altered, notice of such intended alteration, and of the time when it will take effect, shall be put up in some conspicuous place in the court house and in the clerk's office.

45. Process of the court to be under seal.

#### *Jurisdiction.*

46. That all pleas of personal actions, where the debt or damage claimed is not more than 20*l.*, may be holden in the county court, without writ; and all such actions brought in the said court shall be heard and determined in a summary way according to the provisions of this act: provided always, that the court shall not have cognizance of any action in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question, or in which the validity of any demise, bequest, or limitation under any will or settlement may be disputed.

#### *Mode of proceeding.*

47. That the plaintiff in any suit to be brought under this act shall enter in the office of the clerk of the court a plaint in writing, stating the names and the last known places of abode of the parties, and the substance of the action intended to be brought, every one of which plaints shall be numbered in every year according to the order in which it shall be entered; and thereupon a summons, bearing the number of the plaint on the margin thereof, shall be issued under the seal of the court according to such form, and be served on the defendant so many days before the day on

which the court shall be holden at which the cause is to be tried as shall be directed by the rules made for regulating the practice of the court as herein-after provided; and delivery of such summons to the defendant, or delivery thereof to his wife or servant, or any inmate at his usual place of abode, trading, or dealing, shall be deemed good service, and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known.

48. That such summons may issue in any district in which the defendant or one of the defendants shall dwell or carry on his business at the time of the action brought, or by leave of the court for the district in which the plaintiff resides, in any district in which the defendant or one of the defendants shall have dwelt or carried on his business at some time within six calendar months next before the time of the action brought.

49. That any summons or other process which under this act shall be required to be served out of the district of the court from which the same shall have issued may be served by the bailiff of any court holden under this act in any part of England, and such service shall be as valid as if the same had been made by the bailiff of the court out of which such summons or other process shall have issued within the jurisdiction of the court for which he acts.

50. That service of any summons or other process of the court which shall require to be served out of the district of the court may be proved by affidavit, purporting to be sworn before any judge of a county court, or before a master extraordinary in chancery, and the fee for taking such affidavit shall not be more than 1s., and shall be costs in the cause; and in every case of the unavoidable absence of the bailiff by whom any summons or other process of the court shall have been served, the service of such summons or other process may be proved, if the judge shall think fit, in the same manner as a summons served out of the district of the court, but without additional charge to either of the parties to the suit.

#### *Jurisdiction of court.*

51. That it shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said courts, but any plaintiff having cause of action for more than 20l., for which a plaint might be entered under this act if not for more than 20l., may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding 20l.; and the judgment of the court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

52. That it shall be lawful for any person under the age of 21 years to prosecute any suit in any court holden under this act for any sum of money not greater than 20l., which may be due to him for wages or piece-work, or for

work as a servant, in the same manner as if he were of full age.

53. That the jurisdiction of the county court under this act shall extend to the recovery of any demand, not exceeding the sum of 20l., which is the whole or part of the balance of a larger demand or of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will: Provided, that whenever an executor or administrator shall be sued for a legacy or a distributive share under an intestacy, and it shall appear by the oath of the defendant that there are no assets at his disposition applicable to the payment of the same, the judge, if he shall think fit on taking all the case into consideration, may order that the action proceed no further in that court.

54. That it shall be lawful for any executor or administrator to sue and be sued in any court holden under this act in like manner as if he were a party in his own right and judgment, and execution shall be such as in the like case would be given or issued in any superior court.

55. That no privilege shall be allowed to any person to exempt him from the jurisdiction of any court holden under this act.

56. That where any plaintiff shall have any demand recoverable under this act against two or more persons jointly answerable, it shall be sufficient if any of such persons be served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued, or may not be within the jurisdiction of the court; and every such person against whom judgment shall have been obtained under this act, and who shall have satisfied such judgment, shall be entitled to demand and recover in the county court under this act contribution from any other person jointly liable with him.

57. That the judge of the county court shall be the sole judge in all actions brought in the said court, and shall determine all questions as well of fact as of law, unless a jury shall be summoned as herein-after mentioned.

#### *Jury in cases above 5l.*

58. That in all actions where the amount claimed shall exceed five pounds it shall be lawful for the plaintiff or defendant to require a jury to be summoned to try the said action; and in all actions where the amount claimed shall not exceed five pounds it shall be lawful for the judge in his discretion, on the application of either of the parties, to order that such action be tried by a jury; and in every case such jury shall be summoned according to the provisions herein-after contained: Provided always, that the party requiring a jury to be summoned shall give to the clerk of the court, or leave at his office, such notice thereof as shall be directed by the rules made for regulating the practice of the court as herein-after provided; and the said clerk shall cause notice of such demand of a jury, made either by the

plaintiff or defendant, to be communicated to the other party to the said action either by post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for either party to prove on the trial that such notice was communicated to the other party by the clerk.

59. That every party requiring any jury to be summoned shall at the time of giving the said notice, and before he shall be entitled to have such jury summoned, pay to the clerk of the court the sum of 5s. for payment of the jury, and such sum shall be considered as costs in the cause, unless otherwise ordered by the judge.

60. Who shall be jurors.

61. That whenever there are any jury trials five jurymen shall be impanelled and sworn, as occasion shall require, to give their verdicts in the causes which shall be brought before them in the said court, and being once sworn shall not need to be re-sworn in each trial; and either of the parties to any such cause shall be entitled to his lawful challenge against all or any of the said jurors in like manner as he would be entitled in any superior court.

*Trial, evidence, set-off, &c.*

62. That on the day in that behalf named in the summons the plaintiff shall appear in court in person, or by some person on his behalf, and thereupon the defendant shall be required, by himself or by some person on his behalf, to answer such plaint; and on answer being made in court the judge shall proceed in a summary way to try the cause and give judgment, without further pleading or formal joinder of issue.

63. That no evidence shall be given by the plaintiff on the trial of any such cause as aforesaid of any demand or cause of action, except such as shall be stated in the summons thereby directed to be issued.

64. That any defendant in any court holden under this act shall be allowed, to set off any debt or damage claimed or recoverable by him from the plaintiff, or to set up by way of defence and to claim and have the benefit of any legal tender, or any statute of limitations, or of his discharge under any statute relating to bankrupts, or any act for relief of insolvent debtors: Provided always, that no such set-off or defence shall be admitted without the consent of the plaintiff, unless such notice thereof as shall be directed by the rules made for regulating the practice of the court shall have been given to the clerk of the court; and in every case in which the practice of the court shall require such notice to be given, the clerk of the court shall, as soon as conveniently may be after receiving such notice, communicate the same to the plaintiff by the post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the clerk.

65. That the judge may in any case, with the consent of both parties to the suit, order the same and all other matters in dispute be-

tween such parties to be referred to arbitration, in such manner and on such terms as he shall think reasonable and just; and such reference shall not be revocable by either party, except by consent of the judge; and the award of the arbitrator or arbitrators or umpire shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the judge: Provided that the judge may, if he think fit, set aside any such award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid.

*Rules of practice.*

66. That five of the judges of the superior courts of common law at Westminster, including the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or two of the said chiefs at the least, shall have power to make and issue all the general rules for regulating the practice and proceedings at the county courts holden under this act, and also to frame forms for every proceeding in the said courts for which they shall think it necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the clerks of the said courts, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be observed and used in all the courts holden under this act: Provided always, that such rules shall be in accordance with the provisions of this act; and in any case not expressly provided for hereof, or by the said rules, the general principles of practice in the superior courts of common law may be adopted and applied, at the discretion of the judges, to actions and proceedings in their several courts.

67. That if upon the day of the return of any summons, or at any continuation or adjournment of the said court, or of the cause for which the said summons shall have been issued, the plaintiff shall not appear, either in person or by some other person on his behalf, the cause shall be struck out; and if he shall appear, but shall not make proof of his demand to the satisfaction of the court, it shall be lawful for the judge to nonsuit the plaintiff, or to give judgment for the defendant, and in either case, where the defendant personally or by some one duly authorised on his behalf shall appear and shall not admit the demand, to award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the judge in his discretion shall think fit, and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same court can be recovered: Provided always, that if the plaintiff shall not appear when called upon, and the defendant, or some one duly authorised on his behalf, shall appear and admit the cause of action to the full amount claimed, the court, if it shall think fit, may proceed to give judgment as if the plaintiff had appeared.

68. That if on the day so named in the summons, or at any continuation or adjournment of the court or cause in which the summons was issued, the defendant shall not appear, either personally or by some one in his behalf, or sufficiently excuse his absence, or shall neglect to answer when called in court, the judge, upon due proof of service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended: Provided also, that the judge in any such case, at the same or any subsequent court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial of the cause, upon such terms as to payment of costs, giving security for debt or costs, or such other terms as he may think fit, on sufficient cause shown to him for that purpose.

69. That the judge may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit, and also may from time to time adjourn any court, or the hearing or further hearing of any cause, in such manner as to the judge may seem fit.

70. That it shall be lawful for the defendant in any action brought under this act, within such time as shall be directed by the rules made for regulating the practice of the court, to pay into court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment; and notice of such payment shall be communicated by the clerk of the court to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business; and the said sum of money shall be paid to the plaintiff; and all proceedings in the said action shall be stayed, unless the plaintiff shall, within such time as shall be directed by the rules made for regulating the practice of the court, signify to the clerk of the court his intention to proceed for the remainder of the demand claimed, and in such case the action shall proceed as if the plaintiff had originally been entered for such remainder only: Provided always, that if the plaintiff shall recover no further sum in the action than shall have been so paid into court, the plaintiff shall pay to the defendant the costs incurred by him in the said action after such payment; and such costs shall be settled by the court, and shall be recoverable by the defendant by such ways and means as any debt may be recovered in the said court.

#### *Evidence of parties, &c.*

71. That on the hearing or trial of any action or on any other proceeding under this act the parties thereto, their wives and agents, and all other persons may be examined upon oath, or solemn affirmation in those cases in which persons are by law allowed to make affirmation instead of making an oath, to be administered by the proper officer of the court.

72. That every person who in any examination upon oath or solemn affirmation before any

judge of the county court shall wilfully and corruptly give false evidence shall be deemed guilty of perjury.

73. That either of the parties to the suit or any other proceeding under this act may obtain, at the office of the clerk of the court, summonses to witnesses, to be served by one of the bailiffs of the court, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control, and in any such summons any number of names may be inserted:

74. Penalty on witnesses neglecting summonses.

75. Fines how to be enforced and accounted for.

#### *Costs and judgment.*

76. That all costs of any action or proceeding in the court not herein otherwise provided for shall be paid by or apportioned between the parties in such manner as the judge shall think fit, and in default of any special direction shall abide the event of the action, and execution may issue for the recovery of any such costs in like manner as for any debt adjudged in the said court.

77. That every order and judgment of any court holden under this act, except as herein provided, shall be final and conclusive between the parties, but the judge shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given to him entitling either the plaintiff or defendant to the judgment of the court, and shall also in every case whatever have the power, if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings.

#### *Removal of plaint to superior court.*

78. That no plaint entered in any court holden under this act shall be removed or removable from the said court into any of her Majesty's superior courts of record at Westminster, or into the Court of Common Pleas at Lancaster, by any writ or process, unless the debt or damage claimed shall exceed 5*l.*; and then only by leave of a judge of one of the superior courts of common law at Westminster, or the Court of Common Pleas of the County Palatine of Lancaster, and upon such terms as to payment of costs, giving security for debt or costs or such other terms as he shall think fit.

#### *Advocates and fees.*

79. That no barrister, attorney, or other person, except by leave of the judge, shall be entitled to be heard to argue any question as counsel or advocate for any other person in any proceeding in any court holden under this act; and no person, not being an attorney admitted to one of her Majesty's superior courts at Westminster, or to the Court of Common Pleas at Lancaster, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said court; and no attorney shall be entitled to have or recover therefore any sum of money, unless

the debt or damage claimed shall be more than 40s., or to have or recover more than 10s. for his fees and costs, unless the debt or damage claimed shall be more than 5l., or more than 15s. in any case within the summary jurisdiction given by this act; and in no case shall any fee exceeding 1l. 3s. 6d. be allowed for employing a barrister as counsel in the cause; and the expence of employing a barrister or an attorney, either by plaintiff or defendant, shall not be allowed on taxation of costs in the case of a plaintiff where less than 5l. is claimed, or in the case of a defendant where less than 5l. is recovered, or in any case unless the judge shall otherwise order.

80. That the judge may make orders concerning the time or times and by what instalments any debt or damages or costs for which judgment shall be obtained in the said court shall be paid, and all such monies shall be paid into court.

### COUNTY COURT JURISDICTION.

#### *To the Editor of the Legal Observer.*

A party having a debt due to him exceeding 40s. reduces his demand and brings an action in the county court for one part of the debt, and having recovered the same with expenses, brings a second action for the excess, upon which it is contended that plaintiff had waived his right to recover the balance by electing to proceed in the county court; the answer is, that where the demand is for goods sold at different times nothing is more common than for a party to split the debt, and having recovered the first sum, to bring another action for the remainder, in fact it is admitted by one of the officers of the court to be a common practice.

On searching the cases there appear to be two classes of authorities, one act relating to courts of requests, where provision is generally made by the statute creating the court, that a plaintiff may reduce his demand to the sum limited to be recovered by the act, if he abandons the excess; the other authorities tend to show, that in a county court a plaintiff cannot split an entire debt exceeding 40s., or falsely acknowledge a part so as to bring the debt within the jurisdiction of the court.

It is submitted, that where a tradesman delivers a bill for goods sold at various times to an amount exceeding 40s.; it is but one claim made in one bill, and therefore an entire debt; but on the other hand it is contended that a demand can be split and the whole recovered in the county court, provided that no single article of the goods sold, constituting the debt, exceeded in value 40s.

This certainly appears an ingenious mode of ousting the jurisdiction of the superior courts, founded, I presume, on Mr. Justice Coleridge's judgment in *Newe v. Ellis*, 21 Law J. Reports, N. S. Queen's Bench, 329:—"That there is no more mischief in allowing a plaintiff to split his demands than now exists in the superior courts, where, if no Court of Requests Act interferes, a party who is vexatious, may bring as many 40s. actions as he pleases."

B. C.

### ANNUAL REPORT OF THE LAW AMENDMENT SOCIETY.

YOUR council have now for the third time to report to the society their views of its state and prospects.

Our numbers have continued to increase. In our last annual report, though we were able to announce a considerable accession of members, we were obliged to add, that our recruits were principally from the ranks of the law: however much we are pleased at lawyers joining us who are willing to aid us, still we felt that our labours would be comparatively fruitless unless we received that support which the community at large alone can give. This year we are happy to state that we have also been joined by many members of both Houses of Parliament, and by many other gentlemen belonging to the mercantile and other classes of the community.

In the last year death has deprived us of two eminent members, the late Earl Spencer and Mr. Justice Story, the one ever ready to promote any useful public object with his influence and purse, the other a man whose legal writings have acquired for him an European reputation. We notice with pleasure that one of our ordinary members, Mr. Burge, has been appointed to fill the office of commissioner of the Leeds Court of Bankruptcy, an office in the due performance of which we take the greater interest, because it is one of those offices which we owe to the progress of law amendment. In losing Earl Spencer we have to regret the loss of a vice-president. The increasing importance of the society, as evidenced by the number of peers of parliament who have joined it, has induced the Council to recommend that we should not merely fill up the vacancy thus occasioned, but increase the number of vice-presidents.

The society has also enlarged the sphere of its exertions. They have called in the public to sanction and approve of their proceedings, and in that appeal they have been completely successful. At a public meeting held on the 6th of June instant, composed of many eminent and learned persons, as well members of this society as persons not yet enrolled, resolutions in favour of its establishment and objects were unanimously passed.

It will be now our duty shortly to recapitulate the proceedings of the society since our last report. We have the satisfaction of stating that the machinery of the society has worked well. The plan of referring suggestions to particular committees competent to entertain them, which committees report on them to the general body, where they are again discussed, has proved well adapted to afford opportunities both for careful and extensive consideration and inquiry. Inquiry indeed is the great object of the society. It may be a humble one, but your Council submit that it is of unquestionable use that inquiry should precede and accompany all changes in the law, and that correct information as to them should be diffused.

The committee on the Law of Property has proceeded with its useful and successful labours, and to this committee, for its zeal and devotion to the cause, your Council feel that especial praise is due. The bills for rendering the assignment of satisfied terms unnecessary and facilitating the conveyance of property, which were founded on their reports, have passed into law. The first of these has been accepted both by the profession and the public as a great improvement. It has removed a source of great delay and expense, (the latter having been calculated as amounting to 200,000*l.* a year,) and has done much to simplify the title to land while its security has been in no way diminished.

By the acts relating to deeds an effectual blow, as we believe, has been struck at awarding professional remuneration according to the length of the instrument, and something has also been done to shorten particular classes of deeds. Your Council has also observed with pleasure that the principle of these acts has been adopted and recognized by her Majesty's government in a bill introduced in the present session for facilitating the granting of leases in Ireland. These acts must also be taken as a legislative expression of opinion, that the profession should exert themselves in every possible way to cheapen and simplify the necessary dealings between man and man connected with real property.

This opinion has been subsequently and more emphatically expressed by the Report of a select Committee of the House of Lords on the Burdens upon Land, a document which has justly received the greatest attention and is entitled to the greatest weight, as expressing the unanimous opinion of all parties in that branch of the legislature of "the necessity of a thorough revision of the whole subject of conveyancing, and the present disease of the prolix, expensive, and vexatious system." Report, p. xiii.

As this opinion was similar to that expressed by this society from its commencement, we cannot but consider the Lords' report as a remarkable confirmation of our views, and (we trust we may add without presumption) some proof of the benefit which has already attended the diffusion of our reports and proceedings.

Your Council is now watching with great interest the progress of the "Bill for further facilitating the Conveyance of Property," which stands for a third reading in the House of Lords without one dissenting voice having been yet expressed. This bill is a further adoption of the recommendations of the society. Your Council also invite attention to the other reports which have proceeded in the present session from this committee, more especially to those "On the Law of Mortgages," "On the Law of Uses and Trusts," and the two reports "On the establishment of a General Registry of Deeds." We believe that in these reports, and in those previously submitted to the society, are to be found suggestions of the utmost importance; and that by following them out carefully and gradually, the community will be able to obtain—1. A more ready mode of investing

money on the mortgage of lands, which will be equally advantageous both to the borrower and the lender; 2. The shortening and cheapening the deeds relating to the transfer of lands; and 3. The simplification of the title to land, and more especially the reduction of the delay and expense now attending a retrospective investigation of title.

We believe that these measures will be a great advantage to all branches of the public, and more especially to the landed interest, and the trading and mercantile interest. We also consider that a great social benefit will be conferred on the community, if the number of small holders of land can be increased, and small capitalists be induced to invest their savings in land. Neither can we possibly believe that changes which will greatly facilitate all legal dealings with land, which will bring about a much larger and more rapid investment of capital in land, which will engage in legal transactions of this nature a much wider circle of the community, can in any way injure the legal profession. We cannot think that the practical exclusion of the great mass of the people from taking any interest in the transactions of conveyancing is beneficial to any class, but least of all is it so to that class whose peculiar business it is to assist and prepare them. Your Council therefore have the fullest confidence, that in recommending and furthering measures which improve and simplify the law, and facilitate to the utmost the alienation of property, they are the true friends of professional interests. Lawyers for the most part ourselves, we consider that the maintenance of the profession of the law in an honourable and prosperous state in all its branches, is beneficial not only to the lawyer but to his client. Your council are desirous that the society should act in harmony with the feelings and interests of the profession; and we believe that these are in this case, as in most others, identical with those of the community at large.\*

The equity committee is entitled to praise for much assiduous attention to the subjects referred to them. They have presented a report recommending the establishment of a Court of Trusts, with a view to creating a system of public trusts, and thus superseding the necessity, if parties so please, of appointing private trustees. Your council have reason to suppose that a bill will be brought in with the view rather of having the principle of a public trustee considered, than of attempting to pass any measure of this sort in the present session. This committee has devoted much time to the subject of the delays in the Masters' offices. The committee have anxiously considered this important and difficult subject, and we look with hope and confidence to their ultimately suggesting a plan which may remedy this long-admitted grievance.

A useful report from the common law committee for rendering the law uniform in all

\* These last observations deserve particular notice.—Ed.



cases of actions brought against persons acting in pursuance of public acts of parliament, has been received, and a bill founded on it has been introduced, and will probably become law in the present session.

The criminal law committee has presented two very valuable reports, one of which recommends for adoption the plan of Captain Maconochie, for the management of transported and other criminals; and the other reports in favour of submitting to the jurisdiction of the petty sessions unaggravated larcenies of small amount. Both these reports were the fruit of great consideration and discussion; and we believe that much benefit in the diffusion of sound information has already resulted from them.

Your Council have the satisfaction of stating, that the income of the society exceeds its present expenditure. We are desirous that, in conformity with the approved practice of almost all other societies, we should endeavour to obtain as extensive a diffusion as possible of the reports and proceedings of the society. Having considered whether we should establish a separate publication for this purpose, or avail ourselves of any existing publication, we have come to the conclusion, that it would be both cheaper and more advantageous in the first instance to avail ourselves of an existing publication, if a suitable one could be found willing to forward the views of the society. We have now much pleasure in announcing, that we have been able to make an arrangement with the publishers of the *Law Review*, (which has from its commencement promoted objects similar to those of the society,) by means of which the reports and proceedings of the society will be regularly published, and a more permanent record of the proceedings of the society be obtained. According to this arrangement, the members of the society will henceforth be presented with the *Law Review*, commencing with the current volume of that work. Our present resources have enabled us to do this. But the larger the funds are which are placed at our disposal, the more shall we be enabled, by the diffusion of sound information, to promote the objects of the society.

In conclusion, your Council think that the present position of the society is a subject of high congratulation: that its progress has been as rapid as the most sanguine could have reasonably expected; that its members may hope for a long and useful continuance of its labours; and that the society has already effected much permanent good, and has laid a broad foundation for effecting much more. We wish particularly to impress on the society, that this must mainly depend on the accession to our ranks of the young. They must carry out what we only are able to project; and to their industry and energy the Council look chiefly for the labour necessary for the completion of all great and useful undertakings.

21, Regent Street, June, 1846.

## BARRISTERS CALLED.

*Trinity Term, 1846.*

LINCOLN'S INN.

9th June.

Edward Shaw Mount, Esq., M. A., Magdalen College, Oxford

Hercules Henry Graves M'Donnell, Esq., Trin. Coll., Dublin.

Charles Browne, Esq., M. A., Worcester Coll., Oxford.

Edward Lamb Sabine, Esq.

William Beckett Turner, Esq., M. A., Queen's Coll., Oxford.

William Percival Pickering, Esq., M. A., Trinity Hall, Cambridge.

INNER TEMPLE.

Edmund Law, Esq.

Thomas Ingleby, Esq.

William Henry Richardson, Esq.

William Powell, Esq.,

William Franks, Esq.

Edwyn Henry Vaughan, Esq.

Charles Warner Lewis, Esq.

John Boyle, Esq.

MIDDLE TEMPLE.

22nd May, 1846.

John Cockerton, Esq.

Thomas Jones, Esq.

Joseph Needham, Esq.

William Thomas Kime, Esq.

Henry Waller, Esq.

12th June.

Luke Henry Hansard, Esq., B. C. L.

Joseph Pringle Simpson, Esq., LL. B.

John William Ellison, Esq.

Charles Bicknell, Esq.

Perry Sparke, Esq.

William Digby Seymour, Esq., B. A., Trinity College, Dublin.

Frederick Joseph Blake Spurway, Esq.

Edward Power, Esq.

## LEGAL OBITUARY.

1846. *May*.—John Evitt, of Haydon Square, solicitor, aged 74; admitted on the Roll in Michaelmas Term, 1792.

*May 30*.—Martin Forster, of Laurence Pountney Place, solicitor; admitted on the Roll in Easter Term, 1816.

## ATTORNEYS TO BE ADMITTED,

*Michaelmas Term, 1846.*

[Continued from page 171.]

## Queen's Bench.

*Clerks' Names and Residences.**To whom Articled, Assigned, &c.*

Gooding, Jonathan Robert, Norwich	James Winter, Norwich
Gunn, John Thaddeus, 61, George Street, Euston Square; and Glastonbury	Robert James, Glastonbury
Gabriel, Samuel Hawkes, Calne; and Lombard Street	C. F. Skirrow, Bedford Row
Harvey, John William Henry, Marburg; Cottage, Hammersmith	Nicholas Lockyer, Plymouth
Heather, James, 14, College Place, Camden Town	Edward Dyne, Lincoln's Inn Fields
Harvey, Thomas Morton, 36, Carey Street; and Egham	William Charles Monckton, Bartlett's Build; &c.
Hamilton, Thomas William, Great Tower St.	F. Horace Moger, Paternoster Row
Hodgson, John, 14, Store Street; Newcastle-upon-Tyne; and Wilmot Street, Russell Square	Thomas Harvey, Egham
Hewson, Frederick, Wrington; and Balham Hill	Keith Barnes, Spring Gardens
Hawkes, Henry, Birmingham	Henry William Fenwick, Newcastle-upon-Tyne
How, Thomas Maynard, 59, Lincoln's Inn Fields; Shrewsbury; and York Street	Bryan Holme, New Inn
Haddock, Thomas, 15, Clarence Road, Kentish Town; Preecot; and Sutton	John James, Wrington.
Harris, Albert Domett, 8, Canal Terrace, Camden Town; and Regent Street, Lambeth	W. S. Harding, Birmingham
Hodgson, Charles Bernard, Grove House, Kensington Mall; and Norfolk Street	W. W. How, Shrewsbury
Hill, Walter, 8, Boxworth Grove, Islington; and Leamington	Alfred Bell, Lincoln's Inn Fields
Hibbet, Henry, 33, Canterbury Street, Waterloo Road; and Guildford	William Roughton, Preecot
Jones, John, 2, Camberwell Place, Upper Grange Road; and Ellesmere	Frederick Carritt, Basinghall Street
James, Philip Frederick, 18, Gerrard Street, Islington; Hereford; and Thavie's Inn	T. H. Hodgson, Carlisle
Jones, John, 37, Wakefield Street; Regent Square; Newark-upon-Trent; and Stamford	Robert Foole, Southam
Knuckey, Francis Burdett, 41, Wilmington Square	Joseph Hockley, Guildford
Knighton, John, 1, Ann Street, Pentonville	George Salter, Ellesmere
Lingard, Richard Boughay Monk, 7, Funnival's Inn; and Heaton Norris	F. Lewis Bodenham, Hereford
Long, George Henry, Windsor	T. F. Andrew Burnaby, Newark-upon-Trent
Lloyd, Cornelius, 12, Granville Street, Brunswick Square; and Abergavenny	George Selby, St. John's Street Road
Lake, George, Mortimer Road, De Beauvoir Town	James Dolman, Clifford's Inn
Lord, Charles Frewen, 26, East Street, Lamb's Conduit Street	Roger Rowson Lingard, Heaton Norris
Lawrance, John William, 15, Marchmont Street; and Peterborough	Thomas Holme Bower, Chancery Lane
Long, Giles, 47, Nelson Square	William Long, Windeor
Lucas, Charles Frederick, 24, Alfred Place, Bedford Square; and Newport Pagnell	Edward Lloyd Powell, Abergavenny
Mallam, Charles, 9, Norfolk Street, Strand; and Oxford	John Lake, Lincoln's Inn
Marston, Richard, 17, Upper Stamford Street; and Ludlow	Benjamin Edward Willoughby, Clifford's Inn
	William Lawrance, Peterborough
	William Long, Nelson Square
	Henry Lucas, Newport Pagnell
	Thomas Mallam, jun., Oxford
	William Urwick, Ludlow

- Maule, Edward, 13, Lamb's Conduit Street; and 10, New Ormond Street . . . . . George Frederick Maule, Huntingdon  
William H. Trinder, John Street, Bedford Row
- Morgan, Isaac, 53, New Bond Street; and Swansea . . . . . John Trevillian Jenkin, Swansea
- Mantell, Alexander Houstoun, 59, Burton Crescent; and Farringdon . . . . . John William Wall, Devizes
- Maud, Edward, Leeds . . . . . John Shackleton, Leeds.
- Molineux, Joseph, 1, Queen Square, Bloomsbury . . . . . George Philcox Hill, Brighton
- Mackey, Christopher B., South Shields . . . . . Christopher Bainbridge, South Shields
- Mitchell, William Hope, 40, Upper Norton Street, Portland Place; and Portsmouth . . . . . William Devereux, Portsmouth
- Moore, Robert Bendle, Carlisle . . . . . Robert Bendle, Carlisle  
Robert Toulmin, Staple Inn  
James Mouzsey, Carlisle
- Maddock, Charles, 59, Lincoln's Inn Fields; and Brunswick Row . . . . . Alfred Bell, Lincoln's Inn Fields
- Northover, Richard, 21, Frederick Street, Gray's Inn Road; Winchester; and Derby St. . . . . John Henry Todd, Winchester
- Nevill, Richard, 5, Princes Street, Bedford Row . . . . . Robert Nevill, Tamworth
- Oliver, James, 4, Lansdowne Terrace, Notting Hill . . . . . Septimus Davidson, Basinghall Street
- Orchard, William Henry, Hornsey; and Milton-on-Thames . . . . . Edward Farn, 14, Gray's Inn Square
- Poole, William T. H., Stoke-under-Hamdon; and Gray's Inn Place . . . . . John Slade, Yeovil  
John Sherwood, King's Bench Walk
- Phillips, Joseph, jun., 7, Millman Street, Bedford Row; and St. Martin's, Stamford Baron . . . . . Richard Newcomb Thompson, Stamford
- Parker, Henry, jun., 3, Raymond Buildings, Gray's Inn . . . . . Henry Parker, Raymond Buildings
- Phillips, William, Kingston-upon-Thames; and Chichester . . . . . William Sewton, Chichester
- Powell, James, jun., 19, Chenies Street, Bedford Square; and Chichester . . . . . James Powell, Chichester
- Payne, Edward Turner, 14, Harpur Street, Queen Square; and Bath . . . . . Henry Hayman, Bath
- Pollard, William Darley, Salford; and Manchester . . . . . Harrison Blair, Salford
- Pratt, John Forster, 7, Arthur Street, Gray's Inn Road; Berwick-upon-Tweed; Alfred Street; and Everett Street . . . . . Robert Weddell, Berwick-upon-Tweed
- Penfold, William John, 1, Gibson Square, Islington; and River Street . . . . . Thomas Attree S. Clarke, and John Sidney M'Whinnie, Brighton
- Palmer, C. E., jun., 7, Harpur Street, Red Lion Square; Barnstaple; and Upper George Street . . . . . Joseph Francis Kingdon, Barnstaple  
C. E. Palmer, sen., Barnstaple
- Poole, Herbert Henry, 16, Goulden Terrace, Islington . . . . . Thomas Hacker Body, Tokenhouse Yard  
Thomas Pocock, Bartholomew Close
- Price, Clement Uvedale, Clementhorpe . . . . . John Blanchard, York  
William Richardson, York
- Piper, George Harry, 7, Ledbury; and Great Quebec Street . . . . . Thomas Jones, Ledbury

[The remainder of this List will be given in our next number.]

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS,

### Common Law Courts.

#### V. EVIDENCE.

##### AGREEMENT.

See Stamp.

#### CONSPIRACY.

*Particularity in indictment.—Declaration by party not on trial.*—A count for conspiracy charged, that T. and B. conspired to cause certain goods, which had been and were imported and brought into the port of London, from parts beyond the seas, and in respect whereof certain duties of customs were then and there due and payable to the Queen, to be carried away from the port and delivered to the owners with-

out payment of a great part of the duties, with intent thereby to defraud the Queen; not further describing the goods or the means of effecting the objects of the conspiracy. *Held*, sufficient, on motion in arrest of judgment.

T. did not appear; B. pleaded not guilty. On his trial it was proved that T. was agent for the importer of the goods, B., a landing waiter at the Custom house; that it was T.'s duty, (under stat. 3 & 4 W. 4, c. 52, s. 24,) to make an entry describing the quantity, &c., of the goods; that a copy of such entry was delivered to B., who was to compare this copy with the goods, and, if they corresponded, to write "correct" on T.'s entry, whereupon T. would receive the goods on payment of the duty according to his entry. It was further proved, that T.'s entry was marked "correct" by B., and corresponded with B.'s copy; that payment was made according to the quantity there described; and that the goods were delivered to T. Evidence was then offered of an entry by T., in his day-book, of the charge made by him on the importer, showing that T. charged as for duty paid on a larger quantity than appeared by the copy before mentioned. *Held*, admissible evidence against B.

It was proved that B. received the proceeds of a cheque drawn by T. after the goods were passed. The counterfoil of this cheque was offered in evidence, on which an account was written by T., showing, as was suggested, that the cheque was drawn for half the aggregate proceeds of several transactions, one of which corresponded in amount with the difference between the duty paid and the duty really due on the above goods. *Held*, not evidence against B. *The Queen v. Blake*, 6 Q. B. 126.

Cases cited in the judgment: *Rex v. Watson*, 2 Stark. N.P.C. 140; *Rex v. Hardy*, 24 How. St. Tr. 199, 436, 447, 451, 865; *Regina v. Murphy*, 8 C. & P. 305.

#### CONVICTION.

**Summary.**—A summary conviction is bad which does not show that the evidence was given in the presence of the party charged.

The same rule applies to warrants of commitment which operate in themselves as convictions; as a committal under the Artificer's Act, 4 G. 4, c. 34, s. 3, of a workman absenting himself from his service.

A committal of T., under the above clause, set forth, that "information and complaint hath been made before me," (the justice,) "by F.," "upon the oath of F.," "for that," &c., (stating the charge): "And whereas, the said T., in pursuance of my warrant for that purpose, hath *this day* appeared before me to answer the said complaint, but hath not proved that he is not guilty of the said complaint and charge: and whereas, in pursuance of the statutes in that case," &c., "I have duly examined the proofs and allegations upon oath of both the said parties touching the matter of the said complaint; and, upon due consideration had thereof, have adjudged and determined the said complaint to be true, and that," &c., (af-

firming the charge): "and I do therefore convict him, the said T., of the said offence, in pursuance of the statutes in that case," &c.: "these are therefore to command you," (the constable,) &c.

The above warrant being alone returned to a *habeas corpus ad subjiciendum*: *Held*, (1.) That it did not show that the evidence was given in the presence of T. (2.) That the court could not assume that there was a distinct conviction, free from the objection. Prisoner discharged. *The Queen v. Tordoft*, 5 Q. B. 933.

Cases cited: *Johnson v. Reid*, 6 M. & W. 124; *Rex v. Baker*, 2 Str. 1240; *Rex v. Selway*, 2 Chit. 522.

#### DEPOSITIONS.

Where depositions in a suit in equity are given in evidence at law, and the bill and answer are also put in to show that the depositions are admissible in evidence, the opposite counsel has no right to refer to the bill and answer in his address to the jury. *Chappell v. Purday*, 14 M. & W. 303.

#### EXAMINATION ON INTERROGATORIES.

**Commissioners' jurisdiction.**—A commission to examine witnesses on interrogatories and cross-interrogatories was sent out to Belfast, the commissioners being empowered "to put, or cause to be put, additional questions, when it should appear to them to be necessary and proper." The defendant, when before the commissioners, abandoned some of his cross-interrogatories, and proposed to put additional questions, to which the plaintiff objected. The commissioners proceeded with the examinations on such questions, "subject to the objections." At the trial, the answers to these questions were ruled inadmissible in evidence. *Held*, that the ruling was right, as the commissioners ought themselves to have decided whether the questions were necessary and proper to be put, and not to have left that question for the determination of the court. *Williamson v. Page*, 3 D. & L. 14.

#### INDICTMENT.

*See Conspiracy.*

#### STAMP.

**Producing agreement.**—The plaintiff brought his action on an agreement with the defendants to pay him a sum of 5*l.* per horse power for every steam-engine they should contract to have made on his patent principle. The declaration stated, that they had contracted with Messrs. F., W., & Co., for the making of a steam-engine on the plaintiff's patent principle, but had refused to pay the plaintiff 5*l.* per horse power. The plea traversed in terms that the defendants had so contracted with Messrs. F., W., & Co., on which issue was joined. The court made absolute a rule calling on the defendants to produce at the Stamp Office, for the purpose of being stamped, a letter written by Messrs. F., W., & Co., in reply to a former letter of the defendant's, containing evidence of a contract for the manufacture by Messrs. F., W., & Co., of a steam-engine for the defend-

ants on the plaintiff's patent principle. *Hall v. Bainbridge*, 3 D. & L. 92.

Cases cited in the judgment: *Lawrence v. Hooker*, 2 M. & P. 9; 5 Bing. 6; *Neale v. Swind*, 2 C. & J. 278; 8 C. & Tyr. 318; 1 Dowl. 314.

#### SUBSEQUENT EVIDENCE.

*Arising after action.*—In an action for trespass in taking plaintiff's goods, the defendant, having pleaded only the general issue, cannot, even in mitigation of damages, give in evidence a repayment by him, after action brought, of money produced by the sale of the goods.

In trespass for taking plaintiff's goods, not guilty being pleaded, and the plaintiff having proved that defendant, an attorney, delivered a *fi. fa.* to the sheriff, who thereupon took the goods, *quare*, whether defendant may give in evidence a judgment on which the *fi. fa.* issued. *Rundle v. Little*, 6 Q. B. 174.

Cases cited by the court: *Codrington v. Lloyd*, 8 A. & E. 449; *Sedley v. Sutherland*, 3 Esp. 202; *Barker v. Brabham*, 3 Wills. 368; *Green v. Elgie*, 5 Q. B. 99.

#### WARRANT OF ATTORNEY.

3 G. 4, c. 39, s. 1.—A warrant of attorney, dated the 4th of April, 1844, was given by the defendant to the plaintiff, the defeasance to which stated it to be for securing 1,300*l.* and interest, on the 15th of April, and authorized the issuing of execution for the whole of the principal and interest then due, with costs, &c., in default of payment. At that time the defendant owed 51*l.* to the plaintiff, who was also liable as a surety for 237*l.* When execution issued, the amount of debt and liabilities was 1,110*l.*, including bills accepted by the plaintiff for the accommodation of the defendant, after the giving of the warrant of attorney, some of which were not due. The amount levied was 1,085*l.* Held, that affidavits were admissible to show the intention of the parties to have been, that the warrant of attorney should be a security for future liabilities, as well as for existing debts, not exceeding 1,300*l.*; and also to show that the accommodation acceptances had been given with that understanding.

The warrant of attorney was filed under 3 G. 4, c. 39, s. 1, on the 24th of April, 1844, with an affidavit stating that deponent "was present on the 4th day of April, 1844, and did see the within named W. H. R. sign, seal, and, as his act and deed, deliver the within warrant of attorney." Held, that the affidavit sufficiently showed that the warrant of attorney was executed within 21 days of its being filed. *Robinson v. Robinson*, 3 D. & L. 134.

Cases cited in the judgment: *Dillon v. Edwards*, 2 M. & P. 350; *Duke v. Watchorn*, 1 Dowl. 265, N. S.

### VI. COSTS.

#### APPEAL.

*Countermand of notice.*—*Stats.* 4 & 5 W. 4, c. 76, s. 84, and 8 & 9 W. 3, c. 30, s. 3.—Parish officers, having given notice of appeal against an order of removal, served a countermand,

stating that they did so on account of the absence of a witness, but should give fresh notice of appeal. The countermand was too late for the sessions. At the sessions, the respondents entered the appeal and moved for costs. The sessions made an order, whereby, after reciting that service of notice of appeal on the respondents had been proved, and that no one appeared for the appellants to prosecute such appeal, they adjudged that the order of removal should be confirmed, and that the appellants should forthwith pay the respondents 15*l.* for their costs and charges which they had incurred and been put to in attending the sessions that day to support the order.

Held, on motion to quash, that the order of confirmation was bad for want of jurisdiction, and that the order for costs could not be separated from it; and therefore, that the whole must be quashed.

*Semble*, per *Patteson, Williams*, and *Colebridge, J.s.*, that an order for costs of the day only would have been good, under stat. 8 & 9 W. 3, c. 30, s. 3. *Regina v. Inhabitants of Stoke Bliss*, 6 Q. B. 158. See *Regina v. Justices of West Riding*, (*Sheffield v. Crick*), 5 Q. B. 1; *Regina v. Justices of Middlesex*, 9 Dowl. P. C. 163, 170.

2. *Order of removal, after supersedeas*—*Rule of quarter sessions.*—On notice of appeal against an order of removal, the removing parish served a supersedeas, and tendered 2*l.* for costs of appeal. It was a rule of the sessions to allow no more costs than 30*s.* on such appeals. The appellants refused the 2*l.*, their costs amounting to a larger sum; and at the next sessions they moved to enter the appeal, for the purpose of obtaining full costs. The justices refused to enter it, alleging their rule of practice as a reason. Held, that the justices ought to have entered the appeal, and exercised their discretion as to costs upon a hearing. *Madamus* granted, to enter continuances and hear. *The Queen v. Justices of Merionethshire*, 6 Q. B. 166*l.* See *Rex v. Justices of Norfolk*, 5 B. & Ald. 284; *Regina v. Townstal*, 3 Q. B.; *Regina v. Staley*, *Id.*

#### ATTACHMENT.

See *Certiorari*.

#### CERTIORARI.

*Attachment.*—When the order of a town council, being brought up by certiorari, is quashed, on motion, with costs, the court should decide who is to be charged with costs as prosecutor of the order, and the party should be named in the rule.

Therefore, where orders for payment of money out of borough funds were so brought up, (under stat. 7 W. 4, and 1 Vict. c. 78, s. 44,) and quashed with costs to be paid by the prosecutors, the rule not further stating by whom the costs were to be paid, and no cause having been shown, the court refused to grant an attachment against individuals, A., B., and C., for nonpayment, though the rule for an attachment was drawn up on reading affidavits of A., B., and C., used in opposing the motion

for a certiorari, and which showed, as the parties applying for an attachment contended, that A., B., and C., were the persons who prosecuted the orders since quashed, by supporting them in this court. *The Queen v. Dunn*, 5 Q. B. 959.

Case cited in the judgment: *Reg. v. York*, 2 Q. B. 847, 850; *Reg. v. Greene*, 4 Q. B. 646.

#### COUNTERMAND.

See *Appeal*, 1.

#### DAY, COSTS OF.

See *Dispaupering*; *Error*.

#### DISPAUPERING.

*Costs of the day, pauper when liable to.*—If a plaintiff who has been admitted to sue in *forma pauperis* acts vexatiously in the conduct of the cause, the court will dispauper him; and if, after notice of trial, the record has been withdrawn, he may be ordered to pay the costs of the day. *Bedwell v. Coldstriving*, 32 L. O. 62.

#### ERROR.

*Liability to costs of the day.*—If a plaintiff in error give notice of trial of an issue in fact, and, without countermanding such notice, withdraw the record, he may be compelled to pay the costs of the day. *Greville, Esq. v. Sparding*, 31 L. O. 96.

#### EXAMINING WITNESSES ON INTERROGATORIES.

*When not allowed.*—The court will not allow to the successful party in a cause the costs of examining a witness upon interrogatories; when such examination is not used at the trial. *Curling v. Robertson*, 7 M. & G. 525.

#### FEIGNED ISSUE.

*What costs allowed.*—A feigned issue having been directed upon an interpleader rule between A. and B., to try the right to certain goods, A. obtained a judge's order for the sale of the goods, and the proceeds were paid into court. The issue having been found against A.: *Held*, upon motion for the payment of the money out of court, that B. was entitled to the costs of the order for the sale and of the application to the court. *Cusel v. Judah de Jacob Pariente*, 7 M. & G. 527.

#### GRATUITIES.

*Clerks in public offices.*—A sum of three guineas was paid by way of gratuity to the clerks in the office of the Accountant General, for expedition in completing the transfers, &c., under an order of the court.

*Held*, that such a payment could not be claimed against the client, on taxation of the costs. *Re Bedson*, 32 L. O. 13.

#### HABEAS CORPUS.

1. Where a party, being in custody for contempt for not putting in an answer to a bill in equity, applied to the court for a writ of *habeas corpus ad subjiendum*, and the court granted the writ, and directed notice thereof to be given to the plaintiff in the cause, who, upon

the return of the writ, opposed the prisoner's discharge, and he was remanded to his former custody: *Held*, that the court had no authority to give the plaintiff costs. *In re Cobbett*, 14 M. & W. 175.

2. *Prisoner.*—Where the court directs a writ of *habeas corpus ad subjiendum* to issue, with notice to a party interested in opposing the prisoner's discharge, and the latter is remanded to his former custody, the court do not allow the costs of the opposition. *Cobbett, in re*, 3 D. & L. 79.

#### HEARING.

See *Maintenance*.

#### INTERROGATORIES.

See *Examining Witnesses*.

#### JUDGE'S CERTIFICATE.

1. *Trespass.*—Though the fact of a notice not to trespass has been proved at the trial, yet if the judge omit to certify, under the 8 & 9 W. 3, c. 11, that the trespass was wilful and malicious, the plaintiff cannot, with a verdict for him with less than 40s. damages, recover his full costs. The 3 & 4 Vict. c. 24, s. 3, does not render a certificate unnecessary.

Leave to enter a suggestion under the statutes 8 & 9 W. 3, c. 11, and 3 & 4 Vict. c. 24, must be the subject of a distinct application, and cannot be granted summarily on discharging a rule. *Dame v. Cole*, 31 L. O. 136.

2. A certificate for costs under the 5 & 6 W. 4, c. 50, s. 93, can only be given by the judge who tries the indictment, where it appears in evidence affirmatively that the road in question is a highway. *The Queen v. Inhabitants of Downholland*, 31 L. O. 293.

#### MAINTENANCE.

*What is a hearing.*—*Stats.* 4 & 5 W. 4, c. 76, s. 73, and 2 & 3 Vict. c. 85, s. 1.—On application to two justices under stat. 2 & 3 Vict. c. 85, s. 1, by guardians of a union, for an order of maintenance, an objection was successfully taken to the evidence offered to prove that the notice of application was signed by a majority of the guardians; no other evidence was given; and the justices thereupon refused to make an order. *Held*, that the justices were not bound to award costs, under stat. 4 & 5 W. 4, c. 76, s. 73, for that there had been no "hearing" of the application. *The Queen v. Lord Hastings*, 6 Q. B. 141.

Cases cited in the judgment: *Reg. v. Recorder of Exeter*, 5 Q. B. 342; *Reg. v. Stamper*, 1 Q. B. 119.

#### QUARTER SESSIONS.

See *Appeal*, 2.

#### REMOVAL.

See *Appeal*, 2.

#### SECURITY.

*When not required.*—A plaintiff will not be required to find security for costs upon an affidavit stating that he is in destitute circumstances, that he cannot be found, and that he

has disavowed any connection with the action. *Armitage v. Grafton*, 31 L. O. 392.

#### TRESPASS.

See *Judge's Certificate*, 1.

#### TRIAL, NEW.

1. Where a rule is made absolute for a new trial, and no mention is made of the costs of the rule, neither party is entitled to them. *Eccles v. Harpur*, 3 D. & L. 71.

2. *Costs of rule*.—Where, on the first trial of a cause, the plaintiff obtained the verdict, and a rule is afterwards made absolute for a new trial, "the costs to abide the event," and the defendant succeeds on the second trial, neither party is entitled to the costs of the rule for a new trial. *Eccles v. Harper*, 14 M. & W. 248. See *Pugh v. Kerr*, 6 M. & W. 20; *Austen v. Gibbs*, 8 T. R. 619.

### VII. LAW OF ATTORNEYS.

#### ADMISSION.

A party having given due notice of his intention to apply to be examined and admitted in Hilary Term, was, under special circumstances, and upon giving fresh notices forthwith, allowed to be examined and admitted in the Michaelmas Term preceding. *Cuthiffe, ex parte*, 31 L. O. 58.

#### AFFIDAVIT.

1. *Motion for judgment*.—On a motion for judgment under 6 & 7 Vict. c. 73, s. 43, the affidavit ought to be intitled in the matter of the attorney, and not in the name of the cause. *In the matter of Hare*, 7 M. & G. 510.

2. *How to be intitled*.—On an application for an order under the 6 & 7 Vict. c. 73, s. 43, held, that the affidavit might be intitled in the cause as well as in the matter of the attorney, the original order for taxation having been so intitled. *In the matter of Vallance and Beoley*, 7 M. & G. 511.

#### AGENT.

See *Taxation*.

#### APPEAL.

See *Judge's order*.

#### ARREST.

See *Privilege*.

#### ATTACHMENT.

*Contempt*.—Where a bill of costs is ordered to be delivered to certain parties or their attorney, a demand of the bill by the clerk or agent of such attorney, is not sufficient to create a contempt by reason of its non-delivery.

The court will not in general grant a rule nisi for an attachment for contempt on the last day of term. *In re Whalley*, 31 L. O. 17.

#### CONTEMPT.

See *Attachment*.

#### DELIVERY OF BILL.

*Letter*.—Where an attorney encloses an unsigned bill of costs in a letter signed by him,

and the bill of costs does not on the face of it show who is the party chargeable therewith, the letter may be referred to, to supply that defect. *Taylor v. Hodgson*, 3 D. & L. 115.

#### JUDGE'S ORDER.

*Appeal*.—*Costs out of purse*.—An appeal lies to the court from every order of a judge at chambers, unless by act of parliament or consent of the parties the judge has a sole jurisdiction.

An attorney undertook to bring an action, and charge costs out of purse only, "should the damages and costs not be recoverable." The plaintiff had a verdict for 600*l.*, and the defendant took the benefit of the Insolvent Act, when a sum was appropriated for the plaintiff as a dividend on the damages and costs. The master having taxed the attorney's costs out of purse only, the court made a rule absolute for the master to review his taxation. *In re Stratton*, 31 L. O. 150.

#### JUDGMENT.

See *Affidavit*, 1.

#### PARTICULARS.

An order for taxation of an attorney's bill and a taxation thereon, do not operate as a waiver of an order for particulars; and if further proceedings are taken without the delivery of particulars under such order, they will be set aside. *Webb v. Hensel*, 31 L. O. 158.

#### PRIVILEGE FROM ARREST.

*Attendance in proceedings before court*.—H., an attorney, not upon the roll of the Common Pleas, acted as the attorney of one of the parties in a cause in that court: the client obtained an order to change his attorney on the usual undertaking to pay the taxed costs, and H. attended at the Master's office for the taxation of those costs, and was arrested for a debt in returning: Held, that having attended at the Master's office in obedience to the order of the court, he was privileged from arrest on returning, and that in fact he was not an attorney of the Common Pleas, and therefore not entitled to his costs, made no difference. *Re Hope*, 31 L. O. 59.

#### PROMISSORY NOTE.

*Given for bill of costs*.—It is no answer to an action on a promissory note, that it was given on account of an attorney's bill, not delivered, pursuant to 6 & 7 Vict. c. 73, before action brought. *Jeffreys v. Evans*, 14 M. & W. 210; S. C. 3 D. & L. 52.

See notes on this case, 31 L. O. 424.

#### RE-ADMISSION.

Circumstances under which the court authorized an applicant to be re-admitted as an attorney. *Esparte* —, 31 L. O. 136.

#### SHERIFF'S FEES.

A. an attorney, sent a writ of ca. sa. to the sheriff to be executed. The sheriff executed the writ.

*Quere*—Can the sheriff maintain an action

against the attorney for his fees for the execution of the writ, or must the action be brought against the party in the original suit? *Mabey v. Mansfield*, 31 L. O. 35.

#### SIGNED BILL.

1. In an action on an attorney and solicitor's bill, one of the items of which is a gross sum paid to a proctor by the plaintiff, for and at the request of the defendant, in respect of business done in a suit in the Ecclesiastical Court, to which the defendant was a party. *Remble*, it is not necessary in the signed bill delivered one month before action, to specify the particular items composing such gross sum. *Taylor v. Tennant*, 31 L. O. 272.

2. *Bill of exchange*.—Where a bill of exchange or other security is given to an attorney on account of costs, he may bring an action on such security, although he has not delivered a signed bill; and it is no objection to such security that it includes future costs. *Jeffrey's v. Evans*, 31 L. O. 36.

See notes on this case, 31 L. O. 424.

#### STAMP DUTY.

*Admission under 9 Geo. 4.*—An attorney who has been admitted to practise in the Court of the County Palatine of Lancaster, on payment of 60*l.* stamp duty on articles of clerkship, is required under the 9 Geo. 4, c. 49, s. 4, on admission to the superior courts at Westminster, to pay an additional duty of 120*l.*

After an attorney has been admitted to practise in the superior courts, on payment of duty which is afterwards found to be insufficient, this court will entertain an application to strike him off the rolls, unless the additional duty is paid. *In re Myers*, 31 L. O. 342.

#### TAXATION.

*Attorney and agent*.—Where an action was brought by the plaintiff, an attorney in the country, to recover a bill of costs against the defendant, who was solicitor to the Post Office, for business done in conducting the prosecution of an individual at the suit of the Postmaster General, for forging a Post Office order, for which purpose he had been employed by the defendant. *Held*, that the court had no power to refer the bill for taxation; and that the fact that the plaintiff had debited the defendant with the whole of the charges did not the less render it a bill for agency business. *Simons, in re*, 3 D. & L. 156.

Case cited in the judgment: *Gedye, in re*, 2 D. & L. 915.

2. *Party liable*.—A party liable to contribute to a fund, out of which an attorney's bill is to be paid, is not a "party liable to pay" such bill within the meaning of the 38th section of the 6 & 7 Vict. c. 73, and cannot therefore apply for its taxation.

*Quare*, as to whether this court has any jurisdiction to order the taxation of a bill for business done on the crown side of the Court of Queen's Bench. *In re Barber*, 31 L. O. 97.

#### UNDERTAKING.

If an undertaking be given by an attorney whilst acting in the capacity of attorney, he may be called upon summarily to perform it, although his services were gratuitous. *In re Fairthorn*, 31 L. O. 465.

#### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

##### Rolls Court.

*Thomas v. Selby*. June 30th, 1846.

23RD ORDER OF AUGUST, 1841.

*If a bill, of which a copy has been served under this order, is amended after service, a new copy must be served.*

*In this case* a bill, of which a copy had been served under the 23rd Order of August, 1841, had been amended merely by adding as defendant a person who could not be found at the time when the original bill was filed.

*Mr. Welford* moved that the service of the copy of the original bill might be deemed good service of the amended bill.

But *Lord Langdale* said he could not make such an order. It was often hard to require service of another copy, when some trifling amendment only had been made; but great difficulty and danger might arise were the service not required.

##### Vice-Chancellor Knight Bruce.

*Brown v. Lake*. June 27, 1846. Lincoln's Inn.

CREDITORS' SUIT. — PETITION. — ABATEMENT.

*Where the plaintiff in a creditor's suit died, the court allowed another creditor, who had been reported as such, to have the conduct of the suit, upon petition, without requiring a bill of revivor or a supplemental bill to be filed.*

A BILL was filed by *Burton Brown* on behalf of himself, and all the other creditors of *Richard Lake*, deceased, against his administratrix and heir-at-law. The usual decree was made for administration. The master reported that several debts were due. Shortly afterwards, the plaintiff, *Burton Brown*, died, leaving a will, which was disputed in the Ecclesiastical Court. A petition was now presented by *Stracey Lake*, who had been reported a creditor for 4,000*l.*, praying to have the future conduct of the suit.

*Mr. Glasse*, for the petitioner, submitted, that under the circumstances of the case, the court would not require a bill of revivor or a supplemental bill to be filed.

*Mr. Collyer* appeared for the defendant.

His Honour granted the order.



## Queen's Bench.

*Doe dem. Dark v. Bowditch.* Easter Term, 1846.

EJECTMENT. — LEASE. — PROVISOR FOR RE-ENTRY.

*A lease of lands and premises contained a proviso that on nonpayment of rent by the lessee the lessor might enter on the premises for the same till the same shall be fully satisfied and discharged. Three quarters of a year's rent being in arrear, the lessor brought an action of ejectment under the 4 Geo. 2, c. 28, and obtained a verdict.*

*Held, that inasmuch as the operation of the second section of the statute was to make the lease absolutely void in case judgment was recovered by the lessor, the statute was only intended to operate when the right of re-entry was absolute and not quousque, and that therefore the action could not be maintained, and judgment must be entered for the defendant.*

THIS was an action of ejectment for the non-payment of rent tried before Mr. Baron Rolfe, on the western circuit, in which a verdict was found for the lessor of the plaintiff. The defendant held the premises under a lease from the plaintiff, in which rent was reserved quarterly, and it contained a proviso, that in case there was rent due and unpaid, the plaintiff might enter on the premises for the same, till the same shall be fully satisfied and discharged. Three quarters of a year's rent being in arrear and unpaid, the plaintiff brought the present action to recover possession of the premises, under the 4 Geo. 2, c. 28. A rule nisi was afterwards obtained to enter judgment for the defendant, on the ground that the proviso for re-entry was only a power enabling the lessor to enter and keep possession of the premises till the arrears of rent were paid, and not a power equivalent to re-entry at common law so as to enable him to bring an action of ejectment.

Mr. Crowder and Mr. Merivale showed cause.

The statute 4 Geo. 2, c. 28, was passed for the purpose of dispensing with the difficulties and niceties required for re-entries by the common law, and provides that where the lessor shall have power of re-entry and half a-year's rent shall be in arrear, that he may enter and serve a declaration in ejectment for the recovery of the demised premises, and if the lessor obtains judgment, he shall thenceforth hold the premises discharged from such lease. The right to enter on the premises under the proviso will have the same operation as a right of re-entry at common law, and an action of ejectment may therefore be maintained. The words entry and re-entry are here used synonymously. The provision that the lease shall be discharged in case judgment shall be recovered against the lessee, cannot mean that the lease in all cases is to be absolutely null and void; but that each party is to be discharged from his liability under the covenants in the lease *quousque*, till the rent in arrear is satisfied, and that

afterwards each party shall be restored to his powers under the lease. In *Doe v. Elsom*,<sup>a</sup> the court held that provisos for re-entry in a lease are to be construed like other contracts, not with the strictness of conditions at common law. They also cited *Doe v. Horsley*.<sup>b</sup>

Mr. Greenwood contra.

The defendant is entitled to the judgment of the court. The statute has provided, in order to prevent the tenant resorting to his remedy in a court of equity, that in case the lessor of the plaintiff shall recover judgment in an action of ejectment, he shall thenceforth hold the demised premises discharged from such lease. That must mean that the lease is to be void altogether, and not *quousque*. In *West v. Davis*,<sup>c</sup> and *Doe v. Masters*,<sup>d</sup> after judgment in ejectment under a power of re-entry the court refused to relieve the tenant by staying the proceeding in ejectment upon payment of the arrears of rent and costs. It is evident the proviso in this lien only contains a qualified power of entry, until a certain condition is performed, and then the tenant is restored to his rights under the lease. The tenant has no power over the accruing rent, it is confined to that which is in arrear. If this right of entry is sufficient to satisfy the statute, then a right of entry, however transitory, will have the effect of discharging the lease altogether; and the defendant will lose all benefit under this lease which he could not have been deprived of by the common law.

*Cur. ado. vult.*

Lord Denman, C. J., delivered the judgment of the court. This was an action of ejectment for non-payment of rent. The lessor of the plaintiff had obtained a verdict. There has been an application to enter the judgment for the defendant. The lease was unartificially drawn, but we must give a reasonable construction to its provisions. It contains a provision, that on non-payment of rent, the lessor of the plaintiff might "enter on the premises for the same till the same shall be fully settled and discharged." Such a condition would entitle the plaintiff to enter and hold till the payment of rent, but when the rent due had been satisfied, the tenant would have a right to re-enter and hold as before." In that case it was held that the lessor of the plaintiff might maintain ejectment at common law; but here the ejectment is brought under the stat. 4 of Geo. 2. c. 28, and the question is, whether the plaintiff can avail himself of that statute. If his right to re-enter is a right to re-enter till the rent is satisfied, but not to avoid the lease, we do not think that he can avail himself of the provision of that statute. The object of that statute was to remove from landlords certain inconveniences occasioned by the niceties of the common law. For this purpose it provides that, where half a-year's rent shall be in arrear, and the landlord or lessor to whom the same is

<sup>a</sup> 1 Mood. & Mal. 189. <sup>b</sup> 1 Ad. & Ellis, 766.

<sup>c</sup> 7 East, 363.

<sup>d</sup> 2 Bar. & Cress. 490.

<sup>e</sup> Co. Litt. 202, b; sect. 327.

due, hath right by law to enter for the non-payment thereof, such landlord or lessor may, without any formal demand or re-entry, serve a declaration in ejectment for the recovery of the demised premises. The service of the declaration, therefore, under that statute stands in the place of the demand of re-entry, and if it appears that the rent is due, and that the landlord has retained a power to re-enter, he may recover in ejectment. If the statute had stopped with that general provision, the plaintiff might perhaps have entitled himself to the benefit of it. Assuming the rent to be due, the only effect of the statute would be to relieve him from the formalities of the common law demand. The statute, however, goes on in the same section to say that in case the lessee shall prevent execution without payment of the rent and full costs of levying the same, and shall not take certain proceedings therein mentioned, then the lessee shall be barred and excluded from all relief, and the landlord shall hold the premises discharged of the lease. The latter part of this section applies to the whole provision, and the effect of it is, under the circumstances there stated, to make the lease absolutely void. It puts an end to the term and creates a forfeiture. We think the statute was not intended so to operate in such a case as the present, but only to apply to a case where the right to re-enter is absolute and not *quousque*; and it is impossible to forget that before the statute equity would not allow a forfeiture for mere non-payment of rent, and the statute does not contain any provision changing the principle of the law.

Judgment for the defendant.

#### Queen's Bench Practice Court.

*In re Robert Swan, gent., one, &c.* Easter Term, 1846.

ATTORNEY, WHEN SUMMARILY LIABLE UPON UNDERTAKING.

*An attorney may, upon motion, be ordered to pay money pursuant to his undertaking, and to pay the costs of the application, though three years have elapsed since the money became due.*

Joyce had obtained a rule calling upon Mr. Robert Swan, an attorney of this court, to show cause why he should not pay to Mr. A. F. Chamberlayne the sum of 71*l.* pursuant to an undertaking given on the 3rd of May, 1843, and why he should not pay the costs of this application.

Pigott now showed cause. This application is too late, the undertaking being from 3 to 4 years old, and no reason is assigned for not coming to the court at an earlier period. In *re Fairthorne*, 1 B. C. 40, the dates were not brought to the notice of the court; but in *Garry v. Wilks*, 2 Dowl. 648, an application to compel an attorney to refund money was held to be too late after a lapse of three terms. [Wightman, J. This is not an application to compel the return of money, but simply that it shall be paid over.] He also cited *In the matter of* ——— 2 B. & Adol. 766.

Wightman, J. It seems to me that to grant this application will be far more favourable to the party against whom it is made than to leave the applicant to bring an action in which he would most likely be successful.

Pigott then submitted that, under the circumstances, the applicant was not entitled to costs.

Joyce, contra, contended that there was nothing in the case to take it out of the ordinary course.

Wightman, J. I am disposed to think that Mr. Swan ought to pay the costs. He should have paid the money when it was demanded, and it is his default which has obliged the applicant to seek the assistance of the court. When money is to be paid by one party to the other, and it has not been paid after application made, the party in default is usually ordered to pay costs, and I see nothing to exempt this case from the ordinary rule.

Rule absolute with costs.

#### *Sarah Auster v. Holland.* May 6th.

STAYING PROCEEDINGS.—ACTION IN THE NAME OF NOMINAL PLAINTIFF WITHOUT HIS AUTHORITY.

*By deed of separation between husband and wife the husband covenanted to pay an annuity to a trustee for the use of the wife. The annuity being in arrear, and the trustee refusing, upon indemnity, to sue the husband, an action was commenced in the trustee's name, but without his authority, for the recovery thereof. Under these circumstances, the court refused to stay proceedings at the instance of the defendant.*

Gray had obtained a rule calling upon the plaintiff and her attorney to show cause why the writ of summons and all subsequent proceedings should not be set aside with costs to be paid by the attorney, upon an affidavit of the defendant stating that he had been informed by the plaintiff that the action was commenced without her authority, and continued against her express directions. The affidavit negatived collusion between the plaintiff and defendant.

By the affidavits in answer it appeared that differences having arisen between the defendant and his wife, they agreed to separate, and that a deed had been executed, whereby the husband covenanted with the plaintiff to pay her, in trust for his wife, an annual sum by monthly payments. Several payments being in arrear, the plaintiff was requested by the wife to commence an action to recover them, and was at the same time offered an indemnity against all consequences by the wife's father. The plaintiff, however, declined to proceed, whereupon this action was commenced in her name. A correspondence had taken place upon the subject, and from the defendant's letters it appeared that he had tendered a sum which had not been accepted.

Lush now showed cause. The defendant

has no right to a stay of proceedings. An indemnity has been offered to the plaintiff, and she makes no application, and it is quite clear that if she did, proceedings would only be stayed until security were given. *Spicer v. Todd*, 2 C. & J. 165. Even if the plaintiff had given the defendant a release, the court would not permit the defendant to plead it. In *Chambers v. Donaldson*, 9 East 471, where husband and wife were living apart under sentence of separation, an action was brought by the wife in the husband's name for breaking and entering the house of the wife and taking her goods, and an application similar to the present having been made by the defendant, upon an affidavit stating that the action had been commenced without the husband's authority, the court refused a rule. Upon the authority of that case this rule must be discharged.

Gray was then called upon to support the rule. There is nothing to lead to the supposition that there has been any collusion between the plaintiff and defendant. The case differs also from *Chambers v. Donaldson*, 9 East, 471, in this, that if money were now brought into court, there would be no one competent to give a valid discharge; for payment to an attorney who sues without the plaintiff's authority, is no answer to an action. *Hubbart v. Phillips*, 14 Law J. (Exc.) N. S. 163, is a direct authority in favour of this application, for it was there held that where an attorney has commenced an action without the plaintiff's authority, either plaintiff or defendant may apply to stay the proceedings and to make the attorney pay costs.

*Coleridge, J.* I think that it sufficiently appears that there is collusion between the plaintiff and defendant. The plaintiff must know that, except by using her name, the wife has no remedy at law, and though an indemnity has been offered she has refused to accept it; moreover, she herself makes no application to court, so that it can hardly be surmised that the use of her name can be attended with any hardship to her, and I do not see that it can be productive of any to the defendant. Looking, therefore, to all the circumstances, I think that this rule should be discharged, and with costs, because all the facts were not stated in the affidavits upon which the rule was obtained.

Rule discharged with costs.

#### Court of Bankruptcy.

*In re John Higgs.* 16th June, 1846.

INSUFFICIENCY OF AFFIDAVIT OF DEBT UNDER STAT. 1 & 2 VICT. C. 110, s. 8.

John Higgs, of the Harewood, in the parish of Chedale, in the county of Stafford, filed an affidavit of debt in this court, under the 1 & 2 Vict. c. 110, s. 8, on the 6th June, 1846, which was as follows:—"John Higgs, &c., maketh oath and saith, that John Higgs, of Turnmill Street, in the parish of Clerkenwell, in the county of Middlesex, is and stands justly in-

debted to this deponent in the sum of one hundred pounds and upwards, for money lent and advanced, and for goods sold and delivered by this deponent to the said John Higgs, at his request." Concluding with the usual averment, that the debtor was a trader within the meaning of the bankrupt laws. A copy of this affidavit, and a notice requiring immediate payment of the debt, having been duly served on the trader debtor, he gave notice to the creditor of his intention to appear before Mr. Commissioner Fonblanque, at the court of bankruptcy, this day, and apply to have the affidavit set aside for insufficiency; or to enter into a bond with two sufficient sureties, pursuant to the act of parliament.

Mr. Sturgeon now appeared on behalf of the debtor, and insisted that the affidavit of debt filed in this case was insufficient, inasmuch as it failed to state the precise amount of the debt. It was sufficient to show that the creditor might be a good petitioning creditor, under the 5 & 6 Vict. c. 122, s. 9, but it was insufficient, under the stat. 1 & 2 Vict. c. 110, s. 8. Under that statute the debtor was to enter into a bond, with sufficient sureties, to pay such sum as should be recovered in any action brought for the recovery of the original debt, or to render him to prison. Here the debt was stated to be "100*l.*, and upwards." How was it possible for a debtor, under such circumstances, to know what should be the amount, of the bond into which he and his sureties were required to enter? Was it 101*l.*, or any greater sum? The word "upwards" would comprehend any sum above 100*l.*

On the part of the creditor it was suggested, that the affidavit filed in this case was in the usual form, and copied from the printed forms in general use.

Mr. Commissioner Fonblanque was of opinion that the affidavit was insufficient. The debtor should have the means of knowing the precise amount claimed from him, in order that if he thought fit, he might procure two sureties to join him in the requisite bond. In this case it was impossible for him to say what would amount to a sufficient bond; and he thought the trader debtor ought not to be called upon to enter into any bond upon such an affidavit.

A memorandum of the commissioner's decision was then indorsed upon the affidavit of debt, and no bond entered into by the trader debtor.

*In re Henry Muller.* 17th June, 1846.

INSUFFICIENT ATTESTATION OF INSOLVENT'S PETITION, UNDER STAT. 7 & 8 VICT. C. 96.

THE petitioner filed his petition in this court, under the 7 & 8 Vict. c. 96, and now came up for his interim order.

On behalf of an opposing creditor, the commissioner's attention was called to an omission in the attestation of the insolvent's petition. The form of attestation given by the act in schedule A, No. 1, is as follows:—"Signed by

the said petitioner on the day of 184, in the presence of of attorney or agent in the matter of the said petition." In the present instance the attestation omitted to state the residence of the petitioner's attorney or agent. It merely stated that it was signed by the said petitioner on, &c., "in the presence of John Chisholme, of , attorney or agent in the matter of the said petition." The 2nd section of the statute directed, that if the petition was not in the form prescribed, such petition should be dismissed. The form prescribed indicated that the residence of the attorney or agent should be inserted, and here it was left in blank. Some printed forms used in the court were handed up to the commissioner in which the second "of" and the blank following it for the residence of the attorney or agent did not appear, and it was observed that the petitioner's attorney, Mr. Chisholme, had been misled by these forms.

Mr. Commissioner Goulbourn said, it did unfortunately happen that the printed forms were not always correct: it was the duty of the commissioners, however, not to look to these forms, but to the act of parliament. In this case the statute was imperative. The petition must be in the prescribed form; here it was not so, as the residence of the attorney or agent was omitted. Where an agent acted for a petitioner, he could conceive it to be very desirable that the residence of the agent should appear on the petition. Perhaps when the petition was attested by a town attorney it was not so material, but the act of parliament made no distinction and left him no discretion in the matter. As the objection was taken, he felt bound to pronounce it to be fatal, and to order the petition to be dismissed. It would, of course, be competent for the insolvent to file a second petition, in which the omission might be supplied.

The petition was accordingly dismissed.

## CIRCUITS OF THE COMMISSIONERS

### FOR THE RELIEF OF INSOLVENT DEBTORS.

#### Autumn Circuits, 1846.

##### NORTHERN CIRCUIT.

Henry Revell Reynolds, Esq., Chief Commissioner.

Yorkshire, at Sheffield, Wednesday, Oct. 21.  
Yorkshire, at Wakefield, Thursday, Oct. 22.  
At the Town and County of the Town of Kingston-upon-Hull, Tuesday, Oct. 27.  
Yorkshire, at York, Thursday, Oct. 29.  
Yorkshire, at Richmond, Saturday, Oct. 31.  
Durham, at Durham, Monday, Nov. 2.  
Northumberland, at the Moot Hall, Newcastle-upon-Tyne, Wednesday, Nov. 4.  
At the Town and County of the Town of Newcastle-upon-Tyne, the same day.  
Cumberland, at Carlisle, Friday, Nov. 6.  
Westmoreland, at Appleby, Monday, Nov. 9.  
Westmoreland, at Kendal, Tuesday, Nov. 10.

Lancashire, at Lancaster, Wednesday, Nov. 11.  
Lancashire, at Liverpool, Wednesday, Nov. 18.  
Montgomeryshire, at Welshpool, Saturday, Nov. 21.  
Merionethshire, at Dolgelly, Tuesday, Nov. 24.  
Carnarvonshire, at Carnarvon, Thursday, Nov. 26.  
Anglesey, at Beaumaris, Friday, Nov. 27.  
Denbighshire, at Ruthin, Monday, Nov. 30.  
Flintshire, at Mold, Tuesday, Dec. 1.  
Cheshire, at Cheshire, Wednesday, Dec. 2.  
At the City and County of the City of Chester, the same day.

##### HOME CIRCUIT.

John Greathead Harris, Esq., Commissioner.  
Kent, at Dover, Friday, Nov. 6.  
At the City and County of the City of Canterbury, Saturday, Nov. 7.  
Kent, at Maidstone, Monday, Nov. 9.  
Sussex, at Lewes, Friday, Nov. 20.  
Hertfordshire, at Hartford, Tuesday, Dec. 1.

##### SOUTHERN CIRCUIT.

William John Law, Esq., Commissioner.  
Berkshire, at Reading, Wednesday, Oct. 28.  
Oxfordshire, at Oxford, Friday, Oct. 30.  
Worcestershire, at Worcester, Monday, Nov. 2.  
Radnorshire, at Presteigne, Wednesday, Nov. 4.  
Herefordshire, at Hereford, Thursday, Nov. 5.  
Breconshire, at Brecon, Saturday, Nov. 7.  
Carmarthenshire, at Carmarthen, Monday, Nov. 9.  
Cardiganshire, at Cardigan, Wednesday, Nov. 11.  
Pembrokeshire, at Haverfordwest, Thursday, Nov. 12.  
Glamorganshire, at Swansea, Monday, Nov. 16.  
Glamorganshire, at Cardiff, Tuesday, Nov. 17.  
Monmouthshire, at Monmouth, Thursday, Nov. 19.  
Gloucestershire, at Gloucester, Friday, Nov. 20.  
At the City of Gloucester, the same day.  
At the City and County of the City of Bristol, Monday, Nov. 23.  
Somersetshire, at Bath, Wednesday, Nov. 25.  
Devonshire, at Plymouth, Saturday, Nov. 28.  
Cornwall, at Bodmin, Monday, Nov. 30.  
Devonshire, at the Castle of Exeter, Wednesday, Dec. 2.  
At the City and County of the City of Exeter, the same day.  
Somersetshire, at Taunton, Friday, Dec. 4.  
Dorsetshire, at Dorchester, Monday, Dec. 7.  
Wiltshire, at Salisbury, Wednesday, Dec. 9.  
At the Town and County of the Town of Southampton, Thursday, Dec. 10.  
Southampton, at Winchester, Friday, Dec. 11.

##### MIDLAND CIRCUIT.

David Pollock, Esq., Commissioner.  
Essex, at Chelmsford, Monday, Oct. 19.  
Essex, at Colchester, Tuesday, Oct. 20.  
Suffolk, at Ipswich, Wednesday, Oct. 21.  
Norfolk, at Yarmouth, Friday, Oct. 23.  
Norfolk, at the Castle of Norwich, Saturday, Oct. 24.  
At the City and County of Norwich, the same day.  
Norfolk, at Lynn, Tuesday, Oct. 27.  
Suffolk, at Bury St. Edmunds, Thursday, Oct. 29.  
Cambridgeshire, at Cambridge, Saturday, Oct. 31.

Huntingdonshire, at Huntingdon, Wednesday, Nov. 4.  
 Northamptonshire, at Peterborough, Thursday, Nov. 5.  
 Rutlandshire, at Oakham, Friday, Nov. 6.  
 Lincolnshire, at Lincoln, Monday, Nov. 9.  
 Nottinghamshire, at Nottingham, Wednesday, Nov. 11.  
 At the Town and County of the Town of Nottingham, the same day.  
 Derbyshire, at Derby, Thursday, Nov. 12.  
 At the City and County of the City of Lichfield, Saturday, Nov. 14.  
 Staffordshire, at Stafford, Monday, Nov. 16.  
 Shropshire, at Shrewsbury, Wednesday, Nov. 18.  
 Shropshire, at Oldbury, Friday, Nov. 20.  
 Warwickshire, at Birmingham, Saturday, Nov. 21.  
 Warwickshire, at Warwick, Tuesday, Nov. 24.  
 Warwickshire, at Coventry, Thursday, Nov. 26.  
 Leicestershire, at Leicester, Saturday, Nov. 28.  
 Northamptonshire, at Northampton, Monday, Nov. 30.  
 Bedfordshire, at Bedford, Wednesday, Dec. 2.  
 Buckinghamshire, at Aylesbury, Friday, Dec. 4.

#### LAW PROMOTIONS AND APPOINTMENTS.

David Pollock, Esq., Chief Justice of the Supreme Court at Bombay.  
 Charles Phillips, Esq., Commissioner for the Relief of Insolvent Debtors. June 25.  
 Henry James Perry, Esq., Commissioner of the Bankruptcy Court for the Liverpool District.

#### NEW QUEEN'S COUNSEL.

Mr. Walpole, called 1831. Mr. Bacon, 1827.  
 Mr. Rolt, 1837. Mr. Willcock, 1825.

#### PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

*Royal Assents.* (18th June, 1846.)

Railway and other Deposits.

26th June, 1846.

Corn Importation.  
 Customs Duties.  
 Administration of Criminal Justice.  
 Salford Hundred Court.  
 Explosive Substances.

#### House of Lords.

##### NEW BILLS.

Recovery of Small Debts and Demands in England.—For 2nd reading. The Lord President of the Council.  
 Juvenile Offenders. For 2nd reading. Marquis of Westminster.  
 Judgment Creditors.—In Committee. Lord Brougham.  
 General Registration of Deeds. — Lord Campbell.

Religious Opinions Relief.—Re-committed. Lord Chancellor.

Correction of Clerks (Church Discipline). In Committee. Bishop of London.

Punishment for deterring Prosecutors, Witnesses, &c.—In Committee. See the bill, 31 L. O. 472. Lord Denman.

Railway Companies Dissolution.—For 3rd reading. Lord Dalhousie.

Insolvent Debtors' Act Amendment. — Passed. Lord Brougham.

Vexatious Actions Protection.—Passed.

Game Laws.—To be reported.

Small Debt Courts:

St. Austell. In Committee.

Birkenhead. In Committee.

#### House of Commons.

##### NEW BILLS.

Real Property Conveyance.

Bankruptcy and Insolvency.—In Committee. See the bill, 31 L. O. 569. Mr. Hawes.

Roman Catholics' Relief. — Re-committed. See the bill, p. 402, *ante*. Mr. Watson.

Small Debts Court:

Somerset. 2nd reading,  
 Northampton.

Poor Removal. — Re-committed. Sir J. Graham. See analysis of the bill, 31 L. O. 473.

Highway Laws Amendment.—For 2nd reading. Sir James Graham.

Metropolis Interments. Mr. Mackinnon.

Death by Accidents Compensation. For 2nd reading, 8th July.

Deodands Abolition. Mr. Bouverie.

Total Abolition of the Punishment of Death. Mr. Ewart.

County Rates. For 2nd reading.

Administration of Justice at Quarter Sessions.—For 2nd reading. Mr. Frewen.

Charitable Trust Accounts.—For 2nd reading. Mr. Hume.

#### THE EDITOR'S LETTER BOX.

THE notices of Examination and Admission for Michaelmas Term, served by our correspondent at Nottingham, on the 16th May, were clearly in good time. The New Rules for Easter Term make no alteration in the time of notice of examination and admission. See p. 50, *ante*.

The letter of "A Chancery Solicitor" relating to the Law of Railways having appeared in the newspapers, it will, we presume, be unnecessary to insert it in these pages.

The periodical list of New Law Books shall be given in an early number.

# The Legal Observer.

SATURDAY, JULY 11, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## LAW PROMOTIONS AND APPOINTMENTS.

AN unusual succession of promotions and appointments, consequent upon the recent change of ministry, has taken place during the past week. We were enabled in our last number to state the names of the principal Law Officers of the Crown, and have now to complete the list. The profession, we are glad to observe, is very strongly represented both in and out of the Cabinet. Thus, in addition to the Lord Chancellor, the office of Secretary of State for the Home Department, rarely occupied by a lawyer, is filled by Sir George Grey, Baronet, formerly one of the Under Secretaries of State for the Colonies, and nephew of the first Earl Grey. Then Lord Campbell has been appointed Chancellor of the Duchy of Lancaster, an office not usually held by a legal politician;—Lord Granville Somerset, it will be recollected, was the retiring officer, and his predecessor was Lord Holland. Next comes Mr. Shiel, Q. C., of the Irish bar, who takes the Mastership of the Mint, a post commonly assigned to a layman.

So far extend the law personages of the cabinet, and we come now to the other members of the government and who belong to the profession. Mr. Charles Buller, the able supporter of the measure for removing the courts from Palace Yard, to the neighbourhood of the Inns of Court, has been appointed Judge Advocate General. Sir Thomas Wilde, who was justly re-appointed to the post of Attorney General, has speedily been promoted to a still higher rank,—that of Chief Justice of the Common Pleas,—vacant by the lamented death which we have elsewhere noticed. We doubt not that the profound know-

ledge, extraordinary talent, and unrivalled powers of application, which have long distinguished the most eminent advocate at the bar, will equally shine forth on the bench. Mr. Jervis, whose appointment as Solicitor General we anticipated, though it was not completed when last we wrote, has been advanced still higher, and now occupies the eminent station of Attorney General, which we have no doubt he will ably maintain.

Mr. John Romilly, the second son of the late Sir Samuel Romilly, *it is said*, will be the Solicitor-General. This would be a satisfactory appointment, especially as Mr. Romilly is a member of the Equity bar, whose claims in the distribution of political patronage have been long neglected.

It may be convenient to sum up this legal muster roll with the dates when these several distinguished persons were called to the bar:—

Lord Chancellor: Lord Cottenham. 23rd Nov. 1804.

Secretary for the Home Department: Sir Geo. Grey. May 1826.

Lord Chief Justice of the Common Pleas: Sir Thomas Wilde. Feb. 1817.

Chancellor of the Duchy of Lancaster: Lord Campbell. 15th Nov. 1806.

Master of the Mint: Right Hon. R. L. Shiel. 1814.

Judge Advocate General: Chas. Buller, Esq. June 1831.

Attorney General: John Jervis, Esq. 6th Feb. 1824.

### IN IRELAND.

Lord Chancellor: Right Hon. Maziere Brady. 1819.

Attorney General: R. Moore, Esq. 1807.

Solicitor General: J.H. Monahan, Esq. 1828.

### IN SCOTLAND.

Lord Advocate: Andrew Rutherford, Esq.

Solicitor General: Thomas Maitland, Esq.

## DEATH OF LORD CHIEF JUSTICE TINDAL.

THERE is but one sentiment—that of deep and sincere regret—pervading all branches of the profession, at the sudden death of Lord Chief Justice Tindal. It appears that about ten days ago, after his lordship had attended the House of Lords on an Irish appeal, he complained of the excessive heat, by which he was almost exhausted. A few hours after reaching home, he was seized by paralysis in one of his legs, and according to the advice of his medical attendant, he soon proceeded to the sea-side. Accompanied by his son, Captain Tindal, he arrived at Folkstone, and there, unhappily, his alarming malady increased, and other members of the family were sent for. No remedy was available; and on Monday evening last, the 6th inst., this excellent judge expired, in the 70th year of his age, lamented scarcely less by every member of the profession than by his own family.

For the present we can record only the dates of his distinguished legal career, and must defer the Memoir, which we hope soon fully to prepare.

Sir Nicholas Conyngham Tindal, knight, M.A., was called to the bar by the Society of Lincoln's Inn, on the 20th June, 1809, and went the Northern Circuit. He was appointed Solicitor-General in Trinity Vacation, 1826, and promoted to the Chief Justiceship of the Common Pleas in Easter Vacation, 1829.

### NOTES ON EQUITY.

#### SUBSTANTIAL REPRESENTATION—WHETHER BINDING ON ABSENTEES.

THERE are two general rules of equitable jurisdiction,—the first, that the court always endeavours to do complete justice, so that the matters involved in the suit may not be left open for future litigation; the second, (which is but ancillary to the first), that all parties interested in the subject-matter of the suit ought to be made parties;<sup>a</sup> for otherwise how can the jus-

<sup>a</sup> It is usual to reverse the order of these rules. But we conceive that the rule requiring all parties interested to appear in the field, is clearly subordinate to the other rule which undertakes universal justice. The rule as to parties is merely instrumental. The other rule

tice of the court be complete, or how can further litigation be averted? upon these two great rules the entire round of practice in equity is built. All general rules, however, are occasionally liable to modification. Thus, sometimes the court must be satisfied with doing only partial justice; and at other times the individuals concerned (as in the case of shareholders in great companies) may be too numerous to be made parties. The court must, therefore, mould its practice and course of proceeding to suit the altered state of society. And, therefore, it, in many instances, (especially of late years,) dispenses with the presence of parties who, according to the general practice, would have been necessary parties.<sup>b</sup> This is now quite settled and well understood. But we believe it has never, till the case to which we are presently to advert, been ever judicially considered how far a decree should be binding upon persons whose presence has been held unnecessary in consequence of the impossibility of securing, or the great inconvenience of requiring, their appearance.

In *Powell v. Wright*,<sup>c</sup> the bill omitted to make certain schedule creditors, amounting to 130 in number, parties to the suit; but prayed that, if necessary, it might be taken to be a bill on behalf of all parties interested. It was submitted, however, by one of the defendants, whether these creditors were *properly represented* in the suit. He did not require that they should *all* be made parties. What he wanted was to have them *substantially* represented, by making some of their class defendants, by which means he said they would be bound and prevented instituting a multiplicity of suits of their own. Upon the opening of this suggestion in court, Lord Langdale, M. R. interposed, and threw out these important observations:—"When some only of a class are made parties, it is a very inaccurate mode of expression to say that they represent the rest. The others may be perfectly ignorant of the proceedings, and of what is really going on. It is matter of convenience or necessity when the court allows one to sue on behalf of the rest. In consequence of the difficulty arising from the number of parties interested, the court relies on the assistance of one class, on the faith, that having the same interest

points to the end which the instrument is intended to accomplish.

<sup>b</sup> *Walworth v. Holt*, 4 Myl. & Cr. 619.

<sup>c</sup> 7 Bear. 444.

with the absent parties, the facts as affecting them will be fairly brought before the court. But in such a case as this, how could you prevent another of the same class filing his own bill if he will not submit to be represented by the person party to the record? Besides, the defendants named to represent the class, would, in this case, be selected by the plaintiff himself. Now, if only those whom the plaintiff pleased should be made parties, it would be strange to say that the others who were absent should be bound. Courts of equity have said—If we can be satisfied that we have before us persons whose interests are the same as the interests of those who are absent, we will be content to hear the cause upon the argument of such persons; and if we are then satisfied that the case has been fairly and honestly presented, we will order the distribution of the fund on the representation of the persons present. Though the court will do this, I have never heard that the proceedings in the suit are to all intents binding on the absent parties. So far as I know, it has never been declared that the absent persons are to be cut off from all chance of correcting any error which, in consequence of their absence, may have been made to their prejudice. A vague sort of expression has been used, that you must have a 'substantial representation'; but it really comes to this, that in simple cases the court requires all parties interested to be present, but in a complicated matter, it is contented with something less."

So that there is in fact no such thing as substantial representation in cases of this sort; and the phrase itself, which is apt to mislead, and has in fact misled many, had better forthwith be discharged from the juridical vocabulary.

#### AWARD SET ASIDE—CONDUCT OF ARBITRATOR, AND OF THE PARTIES.

In the case of *Harvey v. Shelton*,<sup>a</sup> Lord Langdale set aside an award, on the ground that the arbitrator had suffered interviews to take place between himself and one of the parties in the absence of the other—his lordship observing, "It is so ordinary a principle in the administration of justice, that no party to a cause can be allowed to use any means whatsoever to influence the mind of the judge, which means are not

known to, and capable of being met and resisted by the other party, that it is contrary to every principle to allow of such a thing. Both sides must be heard, and each in the presence of the other. And you must not, in the administration of justice, in whatever form, whether in the regularly constituted courts, or in arbitrations, whether before lawyers or merchants, permit one side to use means to influence the decision of the judge, which means are unknown to the other side. It is argued in this case, that there has been equal fault on the other side. And that if an act of this sort is called in question, the party who seeks relief ought not himself to be to blame. This, however, is not a matter between two adverse parties, but a matter concerning the due administration of justice, in which all persons who may ever chance to be litigant in courts of justice, or before arbitrators, have the strongest interest in maintaining, that the principles of justice shall be adhered to in every case."

#### NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

##### RAILWAY AND OTHER DEPOSITS.

9 VICT. C. 20.

An Act to amend an Act of the Second Year of Her present Majesty, for providing for the Custody of certain Monies paid, in pursuance of the Standing Orders of either House of Parliament, by Subscribers to Works or Undertakings to be effected under the Authority of Parliament.—[18th June 1846.]

1. *Recited act repealed. Monies already paid in to be dealt with as directed by former act.*—Whereas an act was passed in 1 & 2 Vict. c. 117, intituled "An Act to provide for the Custody of certain Monies paid, in pursuance of the Standing Orders of either House of Parliament, by Subscribers to Works or Undertakings to be effected under the Authority of Parliament:" And whereas it is expedient that the said act should be repealed, and should be re-enacted, with such modifications, extensions, and alterations as after mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said Act shall be and is hereby repealed: Provided always, that all acts done under the provisions of the said act shall be good, valid, and effectual to all intents and purposes, and that all sums of money paid under the provisions of the said act shall be dealt with in all respects as if this act had not been passed.

<sup>a</sup> 7 Beav. 455.



2. *Authority to deposit.*—And be it enacted, That in all cases in which any sum of money is required by any standing order of either house of parliament, either now in force or hereafter to be in force, to be deposited by the subscribers to any work or undertaking which is to be executed under the authority of an act of parliament, if the director or person or directors or persons having the management of the affairs of such work or undertaking, not exceeding five in number, shall apply to one of the clerks in the office of the clerk of the parliaments with respect to any such money required by any standing order of the Lords spiritual and temporal in parliament assembled, or to one of the clerks of the Private Bill Office of the House of Commons with respect to any such money required by any standing order of the Commons in parliament assembled, to be deposited, it shall be lawful for the clerk so applied to, by warrant or order under his hand, to direct that such sum of money shall be paid in manner herein-after mentioned; (that is to say), into the Bank of England, in the name and with the privy of the Accountant-General of the Court of Chancery in England, if the work or undertaking in respect of which the sum of money is required to be deposited is intended to be executed in that part of the united kingdom called England, or into any of the banks in Scotland established by act of parliament or royal charter, in the name and with the privy of the Queen's Remembrancer of the Court of Exchequer in Scotland, at the option of the person or persons making such application as aforesaid, in case such work or undertaking is intended to be executed in that part of the united kingdom called Scotland, or into the Bank of Ireland, in the name and with the privy of the Accountant-General of the Court of Chancery in Ireland, in case such work or undertaking is intended to be made or executed in that part of the united kingdom called Ireland; and such warrant or order shall be a sufficient authority for the Accountant-General of the Court of Chancery in England, the Queen's Remembrancer of the Court of Exchequer in Scotland, and the Accountant-General of the Court of Chancery in Ireland, respectively, to permit the sum of money directed to be paid by such warrant or order to be placed to an account opened or to be opened in his name in the bank mentioned in such warrant or order.

3. *Payment of deposit.*—And be it enacted, That it shall be lawful for the person or persons named in such warrant or order, or the survivors or survivor of them, to pay the sum mentioned in such warrant or order into the bank mentioned in such warrant or order, in the name and with the privy of the officer or person in whose name such sum shall be directed to be paid by such warrant or order, to be placed to his account there *ex parte* the work or undertaking mentioned in such warrant or order, pursuant to the method prescribed by any act or acts for the time being in force for regulating monies paid into the said

courts, and pursuant to the general orders of the said courts respectively, and without fee or reward; and every such sum so paid in, or the securities in or upon which the same may be invested as herein-after mentioned, or the stocks, funds, or securities authorized to be transferred or deposited in lieu thereof as herein-after mentioned, shall there remain until the same, with all interest and dividends, if any, accrued thereon, shall be paid out of such bank, in pursuance of the provisions of this act: Provided always, that in case any such director or person, directors or persons, having the management of any such proposed work or undertaking as aforesaid, shall have previously invested in the three per centum consolidated or the three per centum reduced bank annuities, exchequer bills or other government securities, the sum or sums of money required by any such standing order of either house of parliament as aforesaid to be deposited by the subscribers to any work or undertaking which is to be executed under the authority of an act of parliament, it shall be lawful for the person or persons named in such warrant or order, or the survivors or survivor of them, to deposit such exchequer bills or other government securities in the bank mentioned in such warrant or order, in the name and with the privy of the officer or person in whose name such sum shall by such warrant or order be directed to be paid, or to transfer such government stocks or funds into the name of the officer or person; and such transfer or deposit shall be directed by such clerk of the office of the clerk of the parliaments, or such clerk of the Private Bill Office of the House of Commons, as the case may be, in lieu of payment of so much of the sum of money required to be deposited as aforesaid as the same exchequer bills or other the government stocks or funds will extend to satisfy at the price at which the same were originally purchased by the said person or persons, director or directors as aforesaid, such price to be proved by production of the broker's certificate of such original purchase.

4. *Investment of deposit.*—And be it enacted, That if the person or persons named in such warrant or order, or the survivors or survivor of them, desire to have invested any sum so paid into the Bank of England or the Bank of Ireland, or any interest or dividend which may have accrued on any stocks or securities so transferred or deposited as aforesaid, the court in the name of whose Accountant-General the same may have been paid may, on a petition presented to such court in a summary way by him or them, order that such sum or such interest or dividends shall, until the same be paid out to the parties entitled to the same in pursuance of this act, be laid out in the three per centum consolidated or three per centum reduced bank annuities, or any government security or securities, at the option of the aforesaid person or persons, or the survivor or survivors of them.

5. *Repayment of deposit.* *Granting certifi-*

cate, &c. not to make the chairman or speaker signing the same liable.—And be it enacted, That on the termination of the session of parliament in which the petition or bill for the purpose of making or sanctioning any such work or undertaking shall have been introduced into parliament, or if such petition or bill shall be rejected or finally withdrawn by some proceeding in either house of parliament, or shall not be allowed to proceed, or if the person or persons by whom the said money was paid or security deposited shall have failed to present a petition, or if an act be passed authorising the making of such work or undertaking, and if in any of the foregoing cases the person or persons named in such warrant or order, or the survivors or survivor of them, or the majority of such persons, apply by petition to the court in the name of whose Accountant-General the sum of money mentioned in such warrant or order shall have been paid, or such exchequer bills, stocks, or funds shall have been deposited or transferred as aforesaid, or to the Court of Exchequer in Scotland, in case such sum of money shall have been paid in the name of the said Queen's Remembrancer, the court in the name of whose Accountant-General or Queen's Remembrancer such sum of money shall have been paid, or such exchequer bills, stocks, or funds shall have been deposited or transferred, shall by order direct the sum of money paid in pursuance of such warrant or order, or the stocks, funds, or securities in or upon which the same may have been invested, and the interest or dividends thereof, or the exchequer bills, stocks, or funds so deposited or transferred as aforesaid, and the interest and dividends thereof, to be paid or transferred to the party or parties so applying, or to any other person or persons whom they may appoint in that behalf; but no such order shall be made in the case of any such petition or bill being rejected or not being allowed to proceed, or being withdrawn or not being presented, or if an act being passed authorising the making of such work or undertaking, unless upon the production of the certificate of the chairman of committees of the House of Lords with reference to any proceeding in the House of Lords, or of the Speaker of the House of Commons with reference to any proceeding in the House of Commons, that the said petition or bill was rejected or not allowed to proceed, or was withdrawn during its passage through one of the houses of parliament, or was not presented, or that such act was passed, which certificate the said chairman or speaker shall grant on the application in writing of the person or persons, or the majority of the persons named in such warrant, or the survivor or survivors of them: Provided always, that the granting of any such certificate, or any mistake or error therein or in relation thereto, shall not make the chairman or speaker signing the same liable in any respect of any monies, stocks, funds, and securities which may be paid, deposited, invested, or transferred in pursuance of the provisions of this act, or the interest or dividends thereof.

## NOTICES OF NEW BOOKS.

*The Equitable Jurisdiction of the Court of Chancery; comprising its Rise, Progress, and Final Establishment, to which is prefixed, with a view to the elucidation of the Main Subject, a Concise Account of the Leading Doctrines of the Common Law and of the Course of Procedure in the Common Law in regard to Civil Rights; with an attempt to trace them to their Sources, and the various Alterations made by the Legislature down to the present day are noticed.* By GEORGE SPENCE, Esq., one of her Majesty's Counsel. In 2 vols. Vol. I. Pp. 748, 1s. Stevens & Norton. 1846.

IN our notice of the first part of this work,\* we have stated our views of the high rank it is entitled to take amongst our standard treatises. The second part, which is divided into four books, is, like the other, mainly historical, and displays much learned research, and many important disquisitions.

One of the great objects of Mr. Spence is to revive and advance the study of the Roman law in this country. To this end he would not only have us look into it at large, but explore it in minute detail, as the true and only groundwork of legal education. Thus, in his own case, we observe he bewails his hard fate that he cannot read German,<sup>b</sup> for no other reason but that his ignorance of that language precludes him from the perusal of Savigny in the original. Now Savigny's great work is a "*History of the Roman Law during the Middle Ages.*" Such is the title; and the body of the work corresponds, being made up of an inquiry very learned and curious

\* See p. 187, ante.

<sup>b</sup> Preface, p. 6, Mr. Spence says, "I have used great exertion, but without effect, to make myself sufficiently master of German to read this work (Savigny's) in the original." With the exception of the "exertion," we are ourselves precisely in Mr. Spence's situation, and intend to continue so; for judging from translations and from the recently expressed opinions of those who speak with authority on the subject, we apprehend the time bestowed in the critical study of this difficult language would be but an ill investment of legal opportunities. "In sober minds," says a late writer, "the German enthusiasm has cooled down. In some it has ceased altogether. We confess it is not without satisfaction that we see this reaction."—Edin. Review, Oct. 1845, article on Lessing.

we readily believe, but surely not to be reckoned *inter essentialia*. At all events, it ought not to have the first place. We should know well what the civil law is, and what parts of it are likely to be of use to us, before investigating with tedious industry the long story of its decline, its downfall, and its revival. Human life is short. The Institutions, the Code, the Pandects, and the novels of Justinian and the earlier Roman codes are enough for any man who hopes to gain a livelihood by the profession of English law. And even these are to be taken sparingly and with wise discrimination. Certain parts of this great body of human wisdom and experience deserve to be studied with the greatest care and attention. Whatever relates to contracts and obligations cannot be conned over too much. So the rules as to testaments deserve examination, because they are avowedly adopted in the ecclesiastical courts, and occasionally followed in Chancery. The rest, we apprehend, is liable to this general observation, that an elaborate study of it ought not to be imposed as a duty upon English lawyers. A general survey will suffice, if it enable them in after life to resort to it for purposes of illustration and definition. And herein, we doubt not, will appear the exceeding great value of the lectures of Mr. Long, who, as our readers know, is to commence next term the delivery at the Middle Temple of his learned lucubrations upon the civil law. He will assuredly separate the husk from the kernel; but as he will probably pass over no part of his great subject untouched, we are satisfied that those who hear him will, from his instructions, acquire the important art of referring to appropriate passages in the *Corpus*, when questions of novelty arise to embarrass our English courts of justice.

It is true, as Mr. Spence contends throughout his learned volume, that much of the law of England was borrowed from the Roman law. But it is equally true, on the other hand, that the law of England as it now stands differs more from the parent stock than any other juridical system having the same original. This must not be overlooked in estimating the importance of reviving a study so long neglected, we had almost said despised, in this country. And when we hear people talk of the *modern* civil law, let us be careful not to be misled by those sounds. A book has recently appeared in this country termed "A Compendium of Modern Civil Law," by Pro-

fessor Mackeldy, of Bonn. The question arises, what is meant by the phrase "*modern* civil law." The short answer, we believe, is, civil law as now received and acted upon in Germany and other parts of the continent; that is to say, civil law as altered and modified to suit the genius and taste of the modern European states.\*

Now this may be of great use on the continent, or possibly in Scotland; but what we want in England is an exposition, not of the civil law as moulded by modern theorists and German innovators, but of that famed juridical system which made illustrious the name of Justinian, which "exhausted so many learned lives, and clothed the walls of such spacious libraries,"—the system of Papinian, of Ulpian, of Paulus, of Trebonian; which, notwithstanding the boasted triumphs of recent discoverers, we must continue still to think is best introduced to the student and practitioner by the copious and skilful commentaries of Voet, of Huber, of Vinnius, and of Cujacius.

One other word on this subject and we have done. It is vain and idle to expect that the civil law can ever become the same important branch of legal study here that it is in Scotland and on the continent, where comparatively speaking, it has been but slightly departed from by modern institutions. In Scotland the lawyers, especially those of the last age, were constantly speaking and writing Justinian, not as M. Jourdain talked prose, without knowing it, but from the fulness of knowledge which they brought to bear in all the exigencies of the forum. Legal education in Scotland commenced with the Roman law, not because Roman law was deemed an elegant accomplishment, but because Roman law was the parent system from which the northern progeny differed but in a few points. Much praise is due to Mr. Spence for his efforts to revive a taste for this long neglected study; and we think he has done good service by a short and well executed summary which he has given of the "*Roman Law relating to Civil Rights*." But the perusal of that summary will of itself justify almost all that we have ventured to

\* In the preface to the compendium, modern civil is said by the translator, Mr. Kaufman, to suggest the still practicable doctrines of the Roman private law, with the later modifications imported from the canon law, from theory, and from the practice of courts in the course of its application.

advance; for the reader who compares it with the law of England on the same subjects, will find maxims either opposed *toto calo* to each other, or, what is worse, bearing a sort of treacherous resemblance, by which we mean an apparent similarity with a latent difference, so as to make it often an experiment full of hazard to quote the one in confirmation or illustration of the other. We, therefore, incline very much to doubt whether more harm than good may not result from permitting students to begin their legal studies at the Roman fountain. This is indeed a serious matter, as to which we offer our humble opinion with the greatest deference and hesitation. But we are strongly impressed with misgivings as to the practical effects which may be expected to arise from the revival of civil law as an academical branch of study in this country. Mr. Spence would have us to believe that, with some trivial exceptions, the entire law of England is drawn from Rome. This proposition can neither be received nor rejected without some qualification. The question is, whether by the help of Roman law we can better understand and practise the law of England. Let us illustrate this by an example. Take the case of a mortgage. The Romans had mortgages, and we may be said to have borrowed them. We beg, with all respect, to ask Mr. Spence whether one set of arbitrary subtleties are not enough for the student. Has he made himself master of the *Tabula in Naufragio* as explained by Lord Hale? If so, he may rest satisfied. But if not, he will in vain repair for light to the Roman *Pignus*. The chances are, that by attempting to master both systems he will in the end comprehend neither, and the result will be confusion worse confounded.

Our view in short is, that the Roman civil law is a most valuable storehouse of legal principles, equitable doctrines, wise maxims, just distinctions, and admirable definitions. But we think it ought to be taken rather at the close than at the commencement of an Englishman's legal education.

We cannot accord unqualified praise to the constitutional matter, of which there is a good deal in this volume. Mr. Spence's ideas respecting our ancient national councils are out of the common track, and so far, we conceive, erroneous. He would fain have them Roman, and tries to show that the forms and style of their proceedings had something *imperial* about them. All

this is straining. The national councils or parliaments of England, as well as of the other European states, are of feudal, or more properly speaking, of Gothic original. We do not discuss this point with Mr. Spence, because it is too well settled either to require vindication or to admit of being disturbed.

These national councils, of which the person on the throne formed always a constituent part, were summoned to advise the sovereign, to enact laws, and to dispense justice. The same theory is still discernible in our highest appellate jurisdiction; and therefore, when Mr. Spence tells us<sup>d</sup> that a decree of the Lord Chancellor could only be made the subject of appeal to the sovereign, and did not lie to the House of Lords, he forgets that the House of Lords is the King's supreme court of judicature, "where," to use the words of Lord Shaftesbury, "his Majesty is highest in the royal estate." So that an appeal to the Lords is, in legal language, and in a constitutional point of view, an appeal to the king in person. In another place Mr. Spence says, "It was not till 1726 that the appellate jurisdiction of the Lords over interlocutory orders and summary proceedings was completely established." Mr. Spence cites no authority for these propositions. We believe the fact to be that there never was any question in the House of Lords as to appeals from interlocutory orders; but the jurisdiction to receive appeals from summary proceedings is so far from having been "completely established in 1726," that no general rule can even now be laid down respecting them.

Notwithstanding the strictures we thus venture to make, we are glad that Mr. Spence has gone deeply into the examination of the origin and progress of the principles and practice of the court. And though it will be to our author's next volume that the practitioner will principally look, the scientific student and all who have leisure and opportunity to pursue such researches will be gratified and well rewarded by a diligent perusal of the present volume. We cannot indeed sufficiently commend the zeal of such eminent writers as Mr. Spence, who devote their valuable time to investigations like these before us, and we trust that, whilst they must be highly prized by the few, they will also be substantially appreciated by the many. The first book of

this part treats of the rise and establishment of the equitable jurisdiction of the Court of Chancery, and is subdivided into the following chapters:—

1. The circumstances which called for the exercise of some extraordinary jurisdiction, that is, a jurisdiction distinct from that of the ordinary courts of justice.
2. The councils of the king—the select council—the great council of parliament as a judicial tribunal.
3. The Court of Chancery, down to the end of the reign of Edward 3rd.
4. The Court of Chancery, from the time of Richard 2nd, down to Edward 4th—The Star Chamber—The Court of Requests—Commissions of oyer and terminer—The Equity Court of the Exchequer.
5. The Chancellor—The Master of the Rolls—The masters and other officers of the court, from the time of Richard 2nd, down to the end of the reign of Charles 1st.
6. Course of procedure in the Court of Chancery down to the hearing and the practice of the court generally.
7. The hearing; references to the masters, &c.
8. The suits of the poor.
9. Form of decrees—Nature of decrees and orders—Mode of enforcing decrees and orders—Costs.
10. Rehearings and appeals.
11. General orders issued for regulating the practice and mode of procedure and for correcting abuses.

Mr. Spence, in referring to the very stringent measures which were taken to prevent impertinent matter from being introduced into the pleadings, gives the following singular illustrations, which, as he observes, are calculated to give some notion of the despotic authority which was exercised by the court in former times. In 1596 we have the following instance:—

- “Between William Mylward, Plaintiff;
- “William Weldon and others, Defendants.
- “And between William Weldon, Plaintiff;
- “And William Mylward, Defendant.

“8th February 1596.

“And where Richard Mylward, the plaintiff's son, did confess that he himself did heretofore draw the long replications of six score sheets of paper, which heretofore was put into the court by the plaintiff to the answer of the defendants; in which replication much impertinent and idle matter was inserted, as it heretofore seemed to his lordship, of purpose to put the defendants to extraordinary charges and that he used no advice of counsel therein: It is ordered by his lordship, that the said Richard Mylward be forthwith committed to the prison of the Fleet for his misdemeanour and abuse offered to this court.’ Reg. Lib. A. 1596, fol. 667.

“Same cause, 10th February 1596.

“Forasmuch as it now appeared to this

court by a report made by the said Lord Keeper, being then Master of the Rolls, upon consideration had of the plaintiff's replication, according to an order of the 7th of May, of Anne 37 Regine; that the said replication doth amount to six score sheets of paper, and yet all the matter thereof, which is pertinent, might have been well contained in sixteen sheets of paper, wherefore the plaintiff was appointed to be examined to find out who drew the same replication, and by whose advice it was done, to the end that the offender might, for example's sake, not only be punished, but also be fined to her Majesty for that offence; and that the defendant might have his charges sustained thereby. (The execution of which order was, by a later order made by the late Lord Keeper the 26th of June, Anno 37th Regine, suspended without any express cause, showed thereof in that order, and was never since called upon until the matter came to be heard on Tuesday last, before the Lord Keeper, at which time some mention was again made of the same replication); and for that it now appeared to his lordship, by the confession of Richard Mylward, alias Alexander, the plaintiff's son, that the said Richard himself did both draw, devise, and engross the same replication, and because his lordship is of opinion that such an abuse is not in any sort to be tolerated—proceeding of a malicious purpose to increase the defendant's charge, and being fraught with much impertinent matter not fit for the court: It is therefore ordered, that the warden of the Fleet shall take the said Richard Mylward, alias Alexander, into his custody, and shall bring him into Westminster Hall on Saturday next, about 10 of the clock in the forenoon, and then and there shall cut a hole in the midst of the same engrossed replication which is delivered unto him for that purpose, and put the said Richard's head through the same hole, and so let the same replication hang about his shoulders with the written side outward, and then, the same so hanging, shall lead the said Richard bareheaded and barefaced round about Westminster Hall, while the courts are sitting, and shall show him at the bar of every of the three courts within the hall, and then shall take him back again to the Fleet, and keep him prisoner until he shall have paid 10*l.* to her Majesty for a fine, and 20 nobles to the defendant for his costs in respect of the aforesaid abuse, which fine and costs are now adjudged and imposed upon him by this court for the abuse aforesaid.’ Reg. Lib. A. 1596, fol. 672. Sir J. Puckering, Lord Keeper. This order is mentioned by Tothill, but his reference is, as usual, erroneous; Mr. Cecil Munro kindly searched for it for me and found it. Replications not being necessarily signed by counsel, were continually referred for slander; *v. int. et. A.* 1594, fol. 459.”

The 2nd book comprises the principles of the equitable jurisdiction of the Court of Chancery as first established, and is thus subdivided:—

Equity and conscience.

2. General maxims and rules which prevailed in the Court of Chancery.

3. Doctrine that the court only operated *in personam*.

Our readers are aware that the next and most important Chancery Reform which may be expected, is that of the *Masters' Offices*, and doubtless there is much scope for amendment in the procedure adopted in those offices. It may be appropriate, therefore, to select the following from Lord Coventry's Orders, which, as Mr. Spence observes, apply to inconveniences operating at the present day:—

"17. The masters of the court shall prefix convenient, but not over long days for hearing such matters as are referred to them; and at the times prefixed, shall proceed without admitting any feigned or dilatory excuses, especially that counsel are otherwise employed, or cannot attend, or are not instructed, there having been notice and time enough allowed, or the like; and after the days, shall speedily send in their reports for the ease of the clients' attendance, which cannot but draw great charge.

"18. If the case be such as the master cannot proceed in the absence of either party or his counsel without just cause absents, the master is presently to certify this court of the default, that the defaulters may be punished by commitment, costs, or otherwise, as the case shall merit. And if the master do use or willingly admit any gross delay, the reference is to be removed, and the master rebuked by the court.

"19. The masters of the court are not upon importunity of counsel or clients, to make special certificates of matters when the court expects an opinion from them; nor are to do it, but where their own judgments in respect of difficulty leadeth them to it, it occasioning for the most part a needless trouble to the court, and both delay and expense to the party.

"21. No references are to be made either to masters or others, (unless it be by assent on both sides,) to hear and determine the cause upon all the proofs or otherwise. But when the Court hath heard it, and reduced it to particular points, especially if those points have relation to account, or matter of that nature, the Court may fitly leave such to be reduced to certainty by a master.

"24. Whereas the masters of the court do sometimes, by way of inducement, fill a leaf or two of the beginning of their reports, and sometimes more, with a long and particular recital of the several points of the orders of reference: they shall forbear such iterations, the same appearing sufficiently in the order, and without any other repetition than thus, 'according to the order, or by direction of an order of such a date,' shall fall directly into the matter of their report, setting down the same clearly, but as briefly as they can for the ease both of the court and the parties.

"22. The Register shall, within ten days after the end of every term, certify to the Lord Keeper, what references depend in the hands of any master, and how long they have depended, that if any of them have depended over long, the court may require an account thereof from the master, and quicken him to a speedy dispatch."

The third book treats of the several distinct heads into which the jurisdiction of the Court of Chancery, exercised on the principles of equity and conscience, resolved itself, which have been continued as part of the modern jurisdiction of the court and the classes or kinds of cases which they embraced. These subjects are arranged as follow:—

1. General introduction.

2. Doctrines of the Court of Chancery as to matters of trust and confidence generally, including uses before the Statute of Uses, 27 Hen. 8.

3. Legislative interference in regard to uses: the statute 1 Rich. 3, c. 1, and the Statute of uses, 27 Hen. 8.

4. Trusts which remain subject to the jurisdiction of the Court of Chancery after the Statute of Uses.

5. Consequences of the Statute of Uses which it was found necessary or expedient to provide against by statute.

6. Uses after the Statute of Uses, 27 Hen. 8, their nature and qualities.

7. The general nature and properties of modern trusts of freehold and trusts of personal estate.

8. The general rules for the construction of deeds and wills, with incidental notices of the rules applicable to their instruments in writing.

9. Attempts made to induce the courts of common law to interfere as to trusts over which the Court of Chancery has assumed jurisdiction.—Matters of trust which are cognizable at law.

10. Jurisdiction of the Court of Chancery in the administration of the estates of testators and intestates.

11. Nature of the jurisdiction of the Court of Chancery as to charities.

12. Doctrines of the Court of Chancery in regard to married women.

13. Jurisdiction of the Court of Chancery as to mortgages.

14. Jurisdiction of the Court of Chancery over infants and their guardians.

15. Jurisdiction exercised by the Lord Chancellor in regard to idiots and lunatics.

"The rule laid down in No. 22, is recognised in the Practical Register, 366, and Curs. Cancellar. A.D. 1715, p. 429, as 'an ancient and useful practice.' Orders had before been specially made to the masters to report by whose default it was that they could not end the matter before them, Reg. L. A. 1594, fol. 174, &c."

16. Jurisdiction exercised by the Court of Chancery where the extinction or transfer of the legal estate or interest itself was the only subject:

17. Cases where the forms or rules of law prevented any remedy being given in the particular case:

18. Cases where a remedy was given at law, but such remedy was insufficient or inappropriate.

19. Interference of the Court of Chancery where the remedy at law may be appropriate, but is hazardous and difficult of attainment.

20. Cases in which the court originates or takes the control of legal proceedings so as to have the legal questions in controversy properly and finally decided between the proper parties.

21. Cases in which the court has assumed a jurisdiction analogous to a legal jurisdiction, viz., to enforce obligations arising out of certain relations in which the parties stand towards each other, on the principles of natural justice, such obligations not being yet recognised or sufficiently or effectually enforced by the courts of common law.

22. The protective and prohibitive jurisdiction exercised by the court of Chancery by the writ of injunction.

23. The assistant jurisdiction of the Court of Chancery—discovery, production of deeds and documents, and preservation of testimony.

The fourth book comprises—The obsolete jurisdiction of the Court of Chancery; and a general summary as to the rise and establishment of the extraordinary jurisdiction of the court. The following are the subdivisions of this part of the work:—

1. The criminal jurisdiction of the Court of Chancery.

2. The obsolete jurisdiction of the Court of Chancery as to civil rights which are now cognisable by the courts of common law.

3. Jurisdiction entertained to redress improper practices and unfair advantages taken by the parties to action at law. Bills to change the venue.

4. The regulation of apprentices.

5. Abandonment of these several heads of jurisdiction, and the reasons.

6. Jurisdiction of the Court of Chancery as to wills and as to divorce.—Admiralty jurisdiction.

7. The question whether other portions of the jurisdiction of the Court of Chancery might be removed to the courts of common law considered.

8. General summary of the rise and establishment of the extraordinary jurisdiction of the Court of Chancery.

Mr. Spence thus concludes the volume :

"An attempt has been made in the preceding pages to present a general view of the distinct system of equitable jurisprudence which was thus established, the retaining of which distinguishes the judicial polity of England, from that of every other state in Europe.

"Whatever may have been the origin of the existing distribution of the judicature in England, it certainly is not now to be attributed to accident or caprice; it proceeds upon the adaptation of the means to the end. The cases proper for courts, constituted as are the courts of law, are now clearly defined; separate judges and a separate bar direct their attention to the study, as they may to the improvement, of that system which belongs to their jurisdiction. Those which are proper for a court with the larger and more extensive powers enjoyed by the Court of Chancery, are equally well defined, and to these the attention and the studies of the judges and practitioners of that court are more especially directed. That the two systems might be united in one tribunal, of course cannot be denied; each of the courts might have an ordinary as well as an extraordinary jurisdiction, with separate machinery for each, as the Court of Exchequer actually had, prior to the abolition of its equitable jurisdiction. That there must be in every scheme of jurisprudence a system of equity to correct the positive law, and supply its deficiencies, all experience shows. In a system like our own, which is so largely based on technical rules, this must peculiarly be the case. If the division of labour is beneficial in other sciences, there seems to be no reason why its advantages should not be reaped when extended to the law. As regards an amalgamation of the two systems, like that which exists in Scotland, experience will hardly be adduced as furnishing any convincing arguments for a resort to that expedient. What may be effected when some modern Tribonian shall appear, with the capacity and the power of compiling, from the now almost countless volumes of the law, a rational and uniform system of jurisprudence, unfettered by merely casual and technical principles, it would be idle at present even to hazard a conjecture.

"In the time of Charles II., down to which time the preceding sketch extends, the transition state of the Court of Chancery ceased, and from that reign the modern history of the court begins. At this time many ponderous volumes of the decisions of the lay chancellors had been collected; fortunately for the purposes of rational justice the seals were placed in the hands of Lord Nottingham, a man just suited to the times. Without introducing any serious innovations, that eminent judge, rejecting such of the materials on which he had to exercise his genius, as would have disfigured the design, out of the remainder raised that structure which now presents itself to our view, the more delicate finishings being for the most part the work of the great Lord Hardwicke. A series of judges, some of them of almost equal celebrity, have followed, down to our own days, in happy succession; they have now completed the work, so far as such an expression can be applied to such an institution.

"Much interesting matter might have been added, by taking a review of the proceedings relating to the Court of Chancery during the

Commonwealth, the connecting link between the ancient and modern state of the court; but so far as those proceedings have had any permanent influence, it has been confined to the ministerial departments of the court and its form of procedure, and these topics it is not my intention to resume.

"In the subsequent part of this work, I propose to endeavour to present a practical view of the principles of the equitable jurisdiction of the Court of Chancery, as it is exercised at the present day. From this point we shall no longer be enticed into the realms of fancy and conjecture; the way having been cleared of matters merely introductory, our attention will solely be directed to the reported decisions of the judges who have presided in the Court of Chancery, from the restoration of Charles II. down to the present time—the *ULPIANS* and *PAPINIANS* of modern England."

## THE (LATE) GOVERNMENT SMALL DEBTS BILL.

[The Small Debts Bill, brought in by the late government, of which we printed the greater part in our last number, (see p. 211, *ante*.) can scarcely be expected to pass in the present session, but we conclude it now, in order that our readers may be prepared in case of need.]

### Executions.

81. That if there shall be cross judgments between the parties execution shall be taken out by that party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the remainder shall be entered, as well as satisfaction on the judgment for the smaller sum, and if both sums shall be equal satisfaction shall be entered upon both judgments.

82. That whenever the judge shall have made an order for the payment of money, the amount shall be recoverable, in case of default or failure of payment thereof forthwith, or at the time or times and in the manner thereby directed, by execution against the goods and chattels of the party against whom such order shall be made; and the clerk of the said court, at the request of the party prosecuting such order, shall issue under the seal of the court a writ of *fieri facias* as a warrant of execution to one of the bailiffs of the court, who by such warrant shall be empowered to levy by distress and sale of the goods and chattels of such party within the jurisdiction of the said court such sum of money as shall be so ordered, and also the costs of the execution; and all constables and other peace officers within their several jurisdiction shall aid in the execution of every such warrant.

83. Execution not to issue till after default in payment of instalment.

84. That every bailiff or officer executing any process of execution issuing out of the said county court against the goods and chattels of

any person may by virtue thereof seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of 5*l*., which shall to that extent be protected from such seizure,) and may also seize and take any money or bank notes (whether of the Bank of England or of any other bank,) and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to any such person against whom any such execution shall have issued as aforesaid.

85. That for the purpose of more effectually discovering and seizing such goods, money, bank notes, or other securities for money aforesaid, it shall be lawful for any such bailiff or other officer, by leave of the court, to search the person either of any party against whom such execution may have issued, or of any member of his family being an inmate of his dwelling, upon whom there may be any reasonable or probable ground for believing that any such goods, money, or securities for money aforesaid may be found, and to take possession of such goods, money or securities aforesaid as shall be found on such search; provided that such bailiff or officer, before he shall proceed to such personal search, shall first demand the production of such goods, money, or securities for money aforesaid from the person so to be searched; provided also, that no female shall be searched as herein-before mentioned except by and in the presence of a female or females only, authorized by the bailiff or officer to make such search as aforesaid.

86. That such bailiff or officer shall deposit with the clerk of the court any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money which he may have so seized or taken as aforesaid, as a security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant for the recovery of the sum or sums secured or made payable thereby, when the time of payment thereof shall have arrived.

87. That it shall be lawful for such bailiff or other officer having such execution as aforesaid, where any person shall have in his possession, custody, or control any goods or securities for money as aforesaid, belonging to any defendant, to demand and receive of and from such person any such goods or securities for money, for the benefit of the plaintiff; and the delivery of such goods or securities as aforesaid to such bailiff or other officer shall discharge the person so delivering the same from any liability to the extent of such delivery.

### Punishment for Fraud.

88. That it shall be lawful for any plaintiff who has obtained any judgment or order in any court held by virtue of this act for the payment of any debt or damages and costs, to obtain a summons from any county court within the limits of which any defendant shall then



reside or carry on his business or employment; such summons to be in such form as shall be directed by the rules made for regulating the practice of the county courts as herein provided; and to be served personally upon the defendant to whom it is directed, requiring the defendant to appear at the court holden next after the expiration of six days after the service of such summons to answer such things as are named in such summons; and if the defendant shall appear in pursuance of such summons, he may be examined upon oath touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which is the subject of the action in which judgment has been obtained against him; and as to the means and expectation he then had, and as to the property and means he still hath, of discharging the said debt or damages or liability, and as to the disposal he may have made of any property; and the plaintiff obtaining such summons as aforesaid, and all other witnesses whom the judge shall think requisite, may be examined upon oath touching the inquiries authorized to be made as aforesaid; and in case such defendant shall not attend as required by such summons, and shall not allege a sufficient excuse for not attending, or shall, if attending, refuse to be sworn, or to disclose any of the things aforesaid, or if he shall not make answer touching the same to the satisfaction of such judge, or if it shall appear to such judge, either by the examination of the defendant or by any other evidence, that such defendant in incurring the debt or liability which is the subject of the action in which judgment has been obtained has obtained credit from the plaintiff under false pretences, or by means of fraud or breach of trust, or has wilfully contracted such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same, or shall have made or caused to be made any gift, delivery, or transfer of any property, or shall have charged, removed, or concealed the same, with intent to defraud his creditors or any of them, or if in any action the damages recovered shall be for any malicious prosecution, or for any libel or slander, or for any malicious injury done to the person or property of the plaintiff, or for criminal conversation, or for seduction, or breach of promise of marriage, or if it shall appear to the satisfaction of the judge of the said court that the defendant has then, or has had since the judgment obtained against him, sufficient means and ability to pay the debt or damages so recovered against him, either altogether, or by any instalment or instalments which the court in which the judgment was obtained shall have ordered, and that he has refused or neglected to pay the same as so ordered, it shall be lawful for such judge, if he shall think fit, to order that any such defendant may be committed to the common goal or prison of the court for any period not exceeding forty days.

89. Power of judge to rescind orders.

90. Power to examine and commit at hearing of the cause.

91. Mode of issuing and executing warrants of execution out of the county courts.

92. That in all cases where a warrant of execution shall have issued against the goods and chattels of any party, or an order for the commitment shall have been made under this act, and such party, or his goods and chattels, shall be out of the jurisdiction of the court, it shall be lawful for the bailiff or officer charged with such warrant, execution, or order of commitment to apply to any justice of the peace acting for any county, division, or place where such party, or his goods and chattels, shall then be, upon proof being made on oath (which oath such justice shall be empowered to administer) that the person or goods or chattels of such party is or are believed to be within the county, division, or place where such justice of peace shall act, such justice of the peace shall sign or endorse his name upon the said warrant, execution, or order of commitment, and thereupon the said officer charged therewith shall take and seize the person or the goods and chattels of the said party wheresoever the same shall be found within the county, division, or place for which such justice shall act; and all constables and other peace officers shall be aiding and assisting within their respective districts in the execution of such warrant, execution, or order.

94. That if it shall at any time appear to the satisfaction of the judge, by the oath or affirmation of any person, or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the judge in his discretion to suspend or stay any judgment, order or execution given, made or issued in such action for such time as the judge shall think fit, and so from time to time until it shall appear by the like proof as aforesaid that such temporary cause of disability has ceased.

95. Regulating the sale of goods taken in execution.

96. Distresses to be within the provisions of 7 & 8 G. 4, c. 17.

#### Lien for Rent.

97. That no landlord of any tenement let, at a weekly rent shall have any claim or lien upon any goods taken in execution under the process of any court held under this act for more than four weeks rent; and if any such tenement shall be let for any other term less than one year, the landlord shall not have any claim or lien upon such goods for more than the arrears of rent accruing during two such terms or times of payment; and if such tenement shall be let for a yearly or other holding for a longer period, such landlord shall not be entitled to have any claim or lien upon such goods for more than one year's arrears.

98. That no judgment or execution shall be stayed, delayed, or reversed, upon or by any writ of error or supersedeas, or upon or by any

for the reversal of any judgment given in any court holden under the provisions of this act.

99. Execution to be superseded on payment of debt and costs.

100. Debtor to be discharged from custody upon payment of debt.

101. Minutes of proceedings to be kept.

102. Lists of unclaimed suitors' money to be made out.

103. All suitors' money paid into court, and unclaimed for six years to go into the court fund.

104. That if any person shall wilfully insult the judge or any juror or any bailiff or officer of the said court, for the time being, during his sitting or attendance in court, or in going to or returning from the court, or shall wilfully interrupt the proceedings of the court, or otherwise misbehave in court, it shall be lawful for any bailiff or officer of the court, with or without the assistance of any other person, by the order of the judge, to take such offender into custody, and detain him until the rising of the court; and the judge shall be empowered, if he shall think fit, by a warrant under his hand and sealed with the seal of the court, to commit any such offender to any prison to which he has power to commit offenders under this act for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding 5*l.* for every such offence, and in default of payment thereof to commit the offender to any such prison as aforesaid for any time not exceeding seven days, unless the said fine be sooner paid.

105. Penalty for assaulting bailiffs or rescuing goods taken in execution.

106. Bailiffs made answerable for escapes, and neglect to levy execution.

107. That if any clerk, bailiff, or officer of the court acting under colour or pretence of the process of the said court shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this act, it shall be lawful for the judge to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs, as he shall think just; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court.

108. Officers taking any fee besides the fees allowed to be discharged.

109. Claims as to goods taken in execution to be adjudicated in court.

#### *Actions of Replevin.*

110. That all actions of replevin in cases of distress for rent, arrears, or damage *faict* within the jurisdiction of the court shall be

brought without writ in any court held under this act.

111. That in every such action of replevin the plaint shall be entered in the court holden under this act for the district wherein the distress was taken.

112. That in case either party to any such action of replevin shall declare to the court in which such action shall be brought that the title to any corporeal or incorporeal hereditament, or to any toll, market, fair, or franchise, is in question, or that the rent or damage in respect of which the distress shall have been taken is more than the sum of 20*l.*, and shall become bound, with two sufficient sureties, to be approved by the clerk of the court in such sums as to the judge shall seem reasonable, regard being had to the nature of the claim, and the alleged value or amount of the property in dispute, or of the rent or damage, to prosecute the suit with effect and without delay, and to prove before the court by which such suit shall be tried that such title as aforesaid is in dispute between the parties, or that there was ground for believing that the said rent or damage was more than 20*l.*, then, and not otherwise, the action may be removed before any court competent to try the same in such manner as hath been accustomed.

#### *Small Tenements.*

113. That when and so soon as the term and interest of the tenant of any house, land, or other corporeal hereditament, where the value of the premises or the rent payable in respect of such tenancy did not exceed the sum of 50*l.* by the year, and upon which no fine shall have been paid, shall have ended, or shall have been duly determined by a legal notice to quit, and such tenant, or, if such tenant do not actually occupy the premises, or occupy only a part thereof, any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, it shall be lawful for the landlord or his agent to enter a plaint in the county court to be holden under this act, and thereupon a summons shall issue to the person so neglecting or refusing; and if the tenant or occupier shall not thereupon appear at the time and place appointed, and show cause to the contrary, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, to the said landlord or his agent, it shall be lawful for such landlord or agent to give to the court proof of the holding, and of the end or other determination of the tenancy, with the time or manner thereof, and, where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession; and upon proof of service of the summons, and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for the judge to issue a warrant under the seal of the court to any bailiff of the court, requiring and authorising him, within a

period to be therein named, not less than seven or more than ten clear days from the date of such warrant, to give possession of the premises to such landlord or agent: and such warrant shall be a sufficient warrant to the said bailiff to enter upon the premises, with such assistants as he shall deem necessary, and to give possession accordingly: Provided always, that entry upon any such warrant shall not be made on a *Sunday, Good Friday, or Christmas Day*, or at any time except between the hours of nine in the morning and four in the afternoon; Provided also, that nothing herein contained shall be deemed to protect any person by whom any such warrant shall be sued out of the county court from any action which may be brought against him by any such tenant or occupier for or in respect of such entry and taking possession where such person had not, at the time of suing out the same as aforesaid, lawful right to the possession of the same premises.

114. That such summons as last aforesaid may be served either personally or by leaving the same with some person being in and apparently residing at the place of abode of the person or persons so holding over as aforesaid; provided that if the person or persons so holding over, or any or either of them, cannot be found, and the place of abode of such person or persons shall either not be known, or admission thereto cannot be obtained for serving such summons, the posting of the said summons on some conspicuous part of the premises so held over shall be deemed to be good service upon such person or persons respectively.

115. That it shall not be lawful to bring any action or prosecution against the judge or against the clerk of the court by whom such warrant as aforesaid shall have been issued, or against any bailiff or other person by whom such warrant may be executed or summons affixed, for issuing such warrant, or executing the same respectively, or affixing such summons, by reason that the person by whom the same shall be sued out had not lawful right to the possession of the premises.

116. Where landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity.

117. That in every case in which the person by whom any such warrant shall be sued out of the county court had not at the time of suing out the same lawful right to the possession of the premises, the suing out of any such warrant as last aforesaid shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry shall be made by virtue of the warrant; and in case any such tenant or occupier will become bound, with two sufficient sureties, to be approved by the clerk of the court, in such sum as to the judge shall seem reasonable, regard being had to the value of the premises, and to the probable cost of such action, to sue the person by whom such warrant was sued out with effect and without delay, and to pay all the costs of the proceeding in such action in case a verdict shall pass for the defendant, or the plaintiff shall dis-

continue or not prosecute his action or become non-suit therein, execution upon the warrant shall be stayed until judgment shall have been given in such action of trespass; and if upon the trial of such action of trespass a verdict shall pass for the plaintiff, such verdict and judgment thereupon shall supersede the said warrant.

118. Proceedings on the bond.

#### *Concurrent Jurisdiction in Certain Cases.*

119. That all actions and proceedings which before the passing of this act might have been brought in any of her Majesty's courts at Westminster, or in the Court of Common Pleas at Lancaster, where the plaintiff dwells more than twenty miles from the defendant, or where the cause of action did not arise wholly or in some material point within the jurisdiction of the court within which the defendant dwells or carries on his business at the time of the action brought, or where any officer of the county court shall be a party, may be brought and determined in any such superior court, at the election of the party suing or proceeding, as if this act had not been passed.

120. That if any action shall be prosecuted after the commencement of this act in any one of her Majesty's courts of record at Westminster, or in the Court of Common Pleas at Lancaster, for any cause other than those lastly herein-before specified, for which a plaintiff might have been entered in any court holden under this act, and a verdict shall be found for the plaintiff for a sum less than 20*l.*, the said plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall not be found for the plaintiff the defendant shall be entitled to his costs as between attorney and client, unless in either case the judge who shall try the cause shall certify on the back of the record that the action was fit to be brought in such superior court.

121. Penalties to be recovered before a justice, and levied by distress.

122. In default of security, offender may be detained till return of warrant of distress.

123. In default of distress, offender may be committed.

124. Penalties to go unto the general fund.

125. Justices may proceed by summons in the recovery of penalties.

126. Form of conviction.

127. Proceedings not to be quashed for want of form.

128. Distress not unlawful for want of form.

#### *Limitation of Actions.*

129. And for the protection of persons acting in the execution of this act, be it enacted, That all actions and prosecutions to be commenced against any person for anything done in pursuance of this act shall be laid and tried in the county where the fact was committed, and shall be commenced within three calendar months after the fact committed, and not afterwards, or otherwise; and notice in writing of such action, and of the cause thereof, shall be

given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if after action brought a sufficient sum of money shall have been paid into court, with costs, by or on behalf of the defendant.

130. That if any person shall bring any suit in any of her Majesty's superior courts at Westminster, or in the Court of Common Pleas at Lancaster, in respect of any grievance committed by any clerk, bailiff, or officer of any court holden under this act, under colour or pretence of the process of the said court, and the jury upon the trial of the action shall not find greater damages for the plaintiff than the sum of 20*l.*, no costs shall be awarded to the plaintiff in such action unless the judge shall certify in court upon the back of the record that the action was fit to be brought in such superior court.

131. Act not to affect rights of Universities of Oxford or Cambridge.

132. Interpretation of act.

## LIST OF PUBLIC GENERAL ACTS.

### 9 VICTORIA.

CAP. 1. An Act for the further amendment of the Acts for the Extension and Promotion of Public Works in Ireland. March 5, 1846.

CAP. 2. An Act to authorize Grand Juries in Ireland, at the Spring Assizes of the present year, to appoint Extraordinary Presentment Sessions; to empower such Sessions to make Presentment for County Works, and to provide Funds for the Execution of such Works, and also to provide for the more prompt Payment of Contractors for works under Grand Jury Presentments in Ireland, March 5, 1846.

CAP. 3. An Act to encourage the Sea Fisheries of Ireland, by promoting and aiding with Grants of public Money the Construction of Piers, Harbours, and other Works. March 5, 1846.

CAP. 4. An Act to amend the Acts for promoting the Drainage of Lands, and Improvement of Navigation by Water Power in connexion with such Drainage in Ireland; and to afford Facilities for increased Employment for the labouring Classes in Works of Drainage during the present year. March 5, 1846.

CAP. 5. An Act to amend an Act for regulating the Construction and Use of Buildings in the Metropolis and its Neighbourhood. March 24, 1846.

CAP. 6. An Act to make Provision, until the 1st day of September 1847, for the Treatment of poor Persons afflicted with Fever in Ireland. March 24, 1846.

CAP. 7. An Act to apply the sum of Eight Millions out of the Consolidated Fund to the Service of the Year 1846. March 30, 1846.

CAP. 8. An Act to make further provisions as to unclaimed Stock and Dividends of the South Sea Company. March 30, 1846.

CAP. 9. An Act for amending the Act for rendering effective the Services of the Chelsea Out-Pensioners, and extending it to the Out-Pensioners of Greenwich Hospital. April 2, 1846.

CAP. 10. An Act for regulating the Payment of the Out-Pensioners of Greenwich and Chelsea Hospitals. April 2, 1846.

CAP. 11. An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters. April 2, 1846.

CAP. 12. An Act for the Regulation of Her Majesty's Royal Marine Forces while on shore. April 2, 1846.

CAP. 13. An Act to indemnify such Persons in the United Kingdom as have omitted to qualify themselves for Offices and Employments, and to extend the time limited for those purposes respectively, until the 25th day of March 1847. May 14, 1846. See p. 91, *ante*.

CAP. 14. An Act to continue until the 1st day of March 1847, and from thence to the end of the then next Session of Parliament, the several Acts relating to Insolvent Debtors in India. May 14, 1846.

CAP. 15. An Act for raising the Sum of Eighteen Millions Three Hundred and Eighty Thousand Two Hundred Pounds, by Exchequer Bills, for the Service of the Year 1846. May 14, 1846.

CAP. 16. An Act to authorize the Inclosure of certain Lands, in pursuance of the Recommendation of the Inclosure Commissioners for England and Wales. May 14, 1846.

CAP. 17. An Act for the Abolition of the exclusive Privilege of trading in Burghs in Scotland. May 14, 1846.

CAP. 18. An Act to amend Two Clerical Errors in an Act of the last Session, for regulating the Labour of Children, young Persons, and Women in Print Works. June 18, 1846.

CAP. 19. An Act to amend an Act of the second and third years of his late Majesty, by providing additional Booths or Polling Places at Elections in Ireland, where the number of Electors whose Names shall begin with the same Letter of the Alphabet shall exceed a certain number. June 18, 1846.

CAP. 20. An Act to amend an Act of the 2nd year of her present Majesty for providing for the Custody of certain Monies paid, in pursuance of the Standing Orders of either House of Parliament, by Subscribers to Works or Undertakings to be effected under the authority of Parliament. June 18, 1846. See the Act, p. 236, *ante*.

CAP. 21. An Act to enable the Right Hon. Henry Viscount Hardinge to receive the full Benefit of an annuity of 5,000*l.* granted to him by the East India Company, June 18, 1846.

## ATTORNEYS TO BE ADMITTED.

Michaelmas Term, 1846.

[Concluded from page 332.]

## Clerks' Names.

## Clerks' Names and Residences.

## To whom Articled, Assigned, &amp;c.

Patrick, Charles, 29, Wilmington Square; and Soley Terrace	Robert Aiskell Davison, Bishop Wearmouth
Powell, Frederick, 20, Newman Street, Oxford Street; and Knaresborough	Samuel Powell, jun., Knaresborough
Radcliffe, Thomas, 7, Park Terrace, Camden Town; and Blackburn	Charles Lever, King's Road
Rowcliffe, Edward Lee, 32, Fitzroy Square; and Stogumber	James Neville, Blackburn
Robson, William W., jun., Bishop Wearmouth	Charles Rowcliffe, Stogumber
Robinson, Henry, Kirkby Lonsdale	George Walton Wright, Sunderland
Shelley, William Parker, 34, Queen's Square, Bloomsbury; and West Bromwich	Francis Pearson, Kirkby Lonsdale
Spraggett, George, 18, Golden Square; Southam; and Upper Stamford Street	John Clarke Chaplin, Birmingham
Shafto, John Cuthbert, 13, Clifford's Inn; and Sunderland	Thomas Samuel Wright, and Robert Frederick Welchman, Southam; and Leamington Priors
Simpson, Robert John, 40, Commercial Road, Lambeth; and Newark-upon-Trent	John Sexhall Kideon, Sunderland
Smith, George Archer, 33, Devonshire Street, Queen's Square; East Retford; and Store Street	John Kideon, Sunderland
Shaw, Richard, jun., 25, Lincoln's Inn Fields; and Burnley	William Whaley Billyard, Badleigh Salterton
Sherwood, Frederick, 31, Woburn Square	William Newton, East Retford
Stone, Joseph, Matlock; and Belper	Richard Shaw, sen., and Robert Artindale, Burnley
Slaney, Robert, Newcastle-under-Lyne	George Vincent, King's Bench Walk
Stretton, George, Nottingham; and Everett Street	James Oldham, Swettenham; Belper
Simpson, Reuben, 34, East Street, Red Lion Square; and Shaftesbury Terrace	Francis Stanier, Newcastle-under-Lyne
Sheppard, Shearman, 30, Northampton Sqr.	George Freeth, Nottingham
Shafto, George Dalston, 13, Clifford's Inn; and Durham	George Rawson, Nottingham
Sanderson, John, 22, Everett Street, Brunswick Square; Everton; and Rock Ferry	John Goodere, Raymond Buildings
Somerville, Stafford Baxter, Doncaster	Charles Shearman, Late of Gray's Inn Square
Snell, Silas, 6, Claremont Square, Pentonville; Stamford Street; and Great Torrington	George Capes, Field Court
Tribe, Henry, 32, Melton Street, Euston Square	John Burrell, Durham
Thompson, Richard, Barlby Hall, near Selby; and Sheffield	John Sanders, Liverpool
Turner, William Rawson, 50, Canterbury Street, York Road	John Shaw, Liverpool
Templer, William Force, 59, Lincoln's Inn Fields; Launceston; and Greenwich	Edmund Baxter, Doncaster
Thorn, Simeon, Agnes Cottage, Kensal Green	Henry Adoniah Vallack, Great Torrington
Tweed, George Tash, 4, Alfred Place, Bedford Square	William Tribe, Worthing
Voss, Robert, 23, River Street, Myddleton Square	Thomas Loftus, New Inn
Unwin, Frederick George, 31, Bartlett's Buildings, Holborn; and Sawbridgeworth	Albert Smith, Sheffield
Ward, Newman, 22, Portsea Place, Connaught Square	Henry Copeman, Kingston-upon-Hull
	Charles Gurney, and John Lethbridge Cowland, Launceston
	John Hamilton, Berner's Street
	Thomas Francis Justice, Berner's Street
	Charles Mason Innes Pollock, Parliament St.
	Henry Hugh Beckett, Lincoln's Inn
	Henry Philippe, Sise Lane
	Thomas Unwin, Sawbridgeworth
	William James Norton, New Street, Bishopsgate Street

- Walker, Edward, Bungay; and Hamstead Road, *WILTSHIRE* James Taylor Margitson, Bungay  
Welford, Edward Davison, 7, Wakefield St., and Hexham Edward Welford, Hexham  
Wilkinson, Richard, 10, Rufford's Row, Islington Roger Moser, Kendal  
Wing, William, jun., Huntingdon; and Millman Street Charles Margetts, Huntingdon  
Watson, William, 3, Durham Terrace, Chelsea; Shawfield Street, Chelsea; and Shrewsbury George Harper, Whitchurch  
Wratlaw, Charles Edward, 16, Norfolk St., Park Lane; and Rugby William Ferdinand Wratlaw, Rugby  
Wills, William Ridouh, 46, Great Ormeau St.; and Birmingham William Wills, Birmingham  
Wilmot, William Bendry, 5, Cloudealey Square; Felix Place, Islington; and Chippenham William Wilmot, Chippenham  
Wilmott, Frederick, 83, High Street, Southwark Richard Carpenter Smith, Bridge Street, Southwark  
Wells, Algernon, Upper Clapton Josiah Wilkinson, Nicholas Lane  
Williams, George, 31, Alfred Place, Bedford Square Edward Daniell, Colchester  
Ward, Alfred, Barnes William Williams, Alfred Place  
White, Charles Edward, 8, Cambridge Square, Hyde Park William Williams, Alfred Place  
Woodroffe, George Thomas, 7, Staple Inn; and Great Coram Street Edward White, Great Marlborough Street  
Whitely, George, 6, Spencer Street, Clerkenwell William Woodroffe, Lincoln's Inn  
George Lawson Whatley, Mitchel Dean  
George Becke, Lincoln's Inn Fields.

Added to the List pursuant to Judges' Orders.

- Collier, Thomas George, 2, Adelaide Terrace, New Windsor Charles Hird, Upper Marylebone Street  
Coleridge, Francis James, 8, Mill Street, Hanover Square; Ottery Saint Mary Francis George Coleridge, Ottery Saint Mary  
Dean, John Joseph, 16, Essex Street, Strand William Dean, Essex Street, Strand.

LEGAL ANTIQUITIES.

REGISTRUM BREVIUM.

We have been favoured with the inspection of a manuscript of the 13th century, tem. Edward 3, about 100 years before the invention of printing; Caxton, the father of English printing, having printed his Chronicles in 1480.

It is entirely composed of precedents for writs, each section containing a distinct process or plaint, and then embodying every variety of wrong and remedy. Initial letters are used instead of names, which show it to be a book of forms, and not a book of record. On the fly-leaf at the end, is the following memorandum:—"This book belongs to Richard Willoughby, of the county of Rutland, Esquire, which he sent Mich. Hunt, Librarian, in Easter Term, 1469, in the 9th year of Edward IVth, to keep for his use." The name (imperfectly cancelled) on the fly-leaf at the beginning appears to be "Richard Preston." By the hand of this gentleman, it was no doubt restored to a descendant of its original possessor, and the identity of ownership is clearly proved by a

motto written on the fly-leaf at the end, very often repeated—

"*Dum sumus in mundo,  
Vivamus corde jocundo.*"

A maxim which its present claimant and his family have adopted for many years.

There can be no doubt but that the manuscript itself is the identical work known in the earliest times by the name of the "*Registrum omnium brevium*," and which is expressly mentioned by Blackstone in the chapter on private wrongs, book 3, cap. 10, sec. 2, p. 183, as follows:—

"It were therefore endless to recount all the several divisions of writs of entry, which the different circumstances of the respective demandants may require, and which are furnished by the laws of England, the same thing being plainly and clearly chalked out in that most ancient and highly venerable collection of legal forms '*The Registrum Omnium Brevium*,' or register of such writs as are sueable out of the king's courts, upon which Fitzherbert's *Natura Brevium* is a comment, and in which every man who is injured will be sure to find a method of relief exactly adapted to his own case, described

in the compass of a few lines, and yet without the omission of any material circumstance."

In the same book, cap. 4, sec. 52, p. 51, Blackstone says:—"In these early times the chief judicial employment for the Chancellor must have been in devising new writs directed to the courts of common law, to give remedy in cases where none was before administered. And it was provided by stat Westm. 2, 13 Edward 1, cap. 24, 'that whenever (from thenceforth) in one case a writ shall be found in the chancery, and in a like case falling under the same right, and requiring like remedy, no precedent of a writ can be produced, the clerks in chancery shall agree in framing a new one, and if they cannot agree, it shall be adjourned to the next parliament, when a writ shall be framed by the consent of the learned in the law, lest it happen for the future that the court of our lord the king be deficient in doing justice to the suitors.' And this accounts for the very great variety of writs of trespass on the case, to be met with on the register, whereby the suitor had ready relief, according to the exigency of his business, and adapted to the speciality, reason, and equity of his very case."

The following are a few specimens of these writs; they are extremely curious, and much better worded than those of the present day, notwithstanding all that the "march of intellect" has done for us.

#### *Of Trespass.—In the Bench.*

The king to the sheriffs of Somerset, greeting. If A. make you secure, &c., then put by gages and safe pledges R. that he be before our justices at Westminster, (or thus,) that he be before us in eight days of Saint Michael, wheretoever we shall then be in England, to show wherefore with force and arms he made an assault upon the said A., at W., and beat, wounded, and ill-treated him, so that his life was despaired of, and other wrongs to him did, to the grievous injury, &c., and against the peace, &c.

#### *Imprisonment until he agreed to pay money.*

To shew wherefore with force and arms he took, imprisoned, and ill-treated the said A., at W., and detained him in prison there, until he made an agreement with the said A. R. to pay him a certain sum of money for his release, and other wrongs, &c.

#### *Hunting in a warren.*

To show wherefore with force and arms he entered the free warren of the said A., at W., and hunted in it, without his leave or license, and took and carried away his hares, rabbits, pheasants, and partridges.

#### *Breach of a deed by which the abbot was bound to find food, &c.*

Put, &c. the Abbott of R. and C., one of the monks of the said abbey, to show, &c. wherefore they have maliciously broken a certain deed in writing, sealed with the common seal of the said house, by which the said abbot and convent of the same place were bound to the

aforesaid P., to find her in food and raiment, and all things necessary to her, until the said abbot and convent married her to some man who had twenty pounds in land or rent—at W.—and other wrongs, &c.

#### *The King's writ thrown into the dirt.*

If M., &c. make you secure, &c. then put J., &c. to answer us as well as the aforesaid M., wherefore when the aforesaid M., lately in our court, claimed our certain writ of prohibition against the aforesaid T., that he should not prosecute in the ecclesiastical court, a certain plea of chattels and debts, which was neither grounded on testament or on marriage, and the said M. declared the said writ to the said T. at, and the said T. then and there took our said writ and threw it into the dirt, and stamped upon it, and prosecuted the same suit in the ecclesiastical court in contempt of us, to the damage of the said M., and contrary to our prohibition, &c. And have there, &c.

#### *Posts and pales broken, by which the mine fell in.*

Wherefore, with force and arms they broke the posts and pales in the mine of the aforesaid A., at W., there placed for the purpose of supporting the aforesaid mine, by which the aforesaid mine and the earth fell in, and the said A. totally lost the profit of his aforesaid mine, and took and carried away sea coals procured from the said mine, to the value of, &c.

#### *Innkeepers held liable for the goods of their guests.*

The king to the sheriffs, &c. If A. make you secure, &c., then put J., &c., to show for that, according to the custom of our realm of England, innkeepers who keep common inns for the entertainment of travellers, where inns of this kind are, are bound to keep travellers in those inns, and their goods within those inns, without subtraction or loss, by night and by day, so that by the neglect or default of such innkeepers, no damage shall happen to their guests, by the default of the said J., some evil disposed persons took and carried away goods and chattels of the said A., who was lately come to the said inn, to the value of 10*l*, and sixty shillings of his money, in counted money, in the inn of the said J., at W., and other wrongs did, &c., to the great loss, &c., and against the custom aforesaid, and have there, &c.

#### *Of intrusion after the death of the tenant in dower.*

The king to the sheriff of Derby, greeting. Command A. that he render to P. C. one of land, with the appurtenances in C., which he claims to be his right and inheritance, and in which land A. hath no right of entry, but by the intrusion which he made in it after the death of M., who was the wife of C., who held it in dower of the gift of the aforesaid C., her aforesaid husband, the father or the brother of the aforesaid P. C., whose heir he is, as he says. And unless, &c.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor. (COTTENHAM.)

*Blenkinsopp v. Blenkinsopp.* July 7, 1846.

NEW ORDERS. — SERVICE OF PROCESS. — JURISDICTION.

The 33rd Order of May, 1845, enabling the court to order service of subpoena to appear and answer, "where a defendant in any suit is out of the jurisdiction," is not limited by the 2 Will. 4, c. 33, and 4 & 5 Will. 4, c. 82, to suits instituted in respect of lands or tenements, or hereditaments in England or Wales.

UPON motion in this cause, (See 31 L. O. 318), supported by an affidavit, that the defendant was residing within the precincts of Holyrood Palace, in Scotland; the *Master of the Rolls* ordered, that the plaintiff should be at liberty to serve the defendant anywhere in Scotland with subpoena, to appear within eight days and to answer within one month.

Mr. Wakefield, with whom was Mr. Faber, moved to discharge the above order, upon the ground that the statutes of 2 Will. 4, c. 33, and 4 & 5 Will. 4, c. 82, required the suit to be instituted in respect to lands or tenements, or hereditaments in England or Wales, and thus controlled the wording of the 23rd General Order of May, 1845. The learned counsel asserted, that the present suit was not in respect of any lands or tenements or hereditaments in England or Wales, and cited *Buchanan v. Rucker*, 9 East, 192, and *Whitmore v. Ryan*, 4 Hare, 612.

Mr. Glasse and Mr. Mozon argued, that the words of the general order were explicit, and that the jurisdiction of the court was not confined by the statute referred to on the other side. They relied upon the case of *Whitmore v. Ryan*, (supra.) In other respects, the order of the *Master of the Rolls* complied with the articles of the general order. *Brown v. Stanton*, and *Jones v. Geddes*, 15 Law Jour. 65, (Chan.)

The Lord Chancellor refused to rescind the order of the *Master of the Rolls*. It might or might not have been prudent to have assimilated the words of the 33rd Order to those in the above mentioned statutes, but a discretion had been vested in the court to grant such application, and the order appealed against had been made in conformity with the general order.

Motion dismissed with costs.

*Attorney-General v. Corporation of Worcester*, July 7 and 8, 1846.

MUNICIPAL CORPORATION ACT.—STYLE OF CORPORATIONS.

The Municipal Corporation Act does not substitute the word "burgess" for that of

"citizen," in cases where the latter was the appellation used before the passing of the act.

In an information by the Attorney General against the Corporation of Worcester, the latter was designated as "The Mayor, Aldermen, and Burgesses of the City of Worcester." In the answer to the information the corporation was styled, "The Mayor, Aldermen, and Citizens of the City of Worcester." Counsel for the corporation applied to Vice-Chancellor Wigram for permission to amend its description in the answer by adding the words, "in the said information called the Mayor, Aldermen, and Burgesses, &c.;" but his Honour refused the application as being unnecessary, and decided that the corporation should answer by the name mentioned in the information.

Mr. Rolt appealed from the decision of the Vice-Chancellor, as it was important for the corporation to know the title by which it should be designated in its legal documents, and he contended that the 6th section of the Municipal Corporation Act, (5 & 6 W. 4, c. 76,) which enacted that the body corporate of any borough mentioned in the schedules should bear the name of the Mayor, Aldermen, and Burgesses of such borough, was controlled by the Interpretation Clause, which directed, *inter alia*, that the word "Burgess" should be read "Citizen" in the case of a city, and he referred his lordship to the various sections of the act in which a distinction was made between a city and a borough.

Mr. Wood maintained, that the object of the 6th section in the act was to produce uniformity of designation, and that the relators had correctly named the corporation.

Lord Chancellor. By the 6th sect. it is enacted, that after the first election of councillors under this act, in any borough, the body or reputed body corporate named in the schedules in connexion with such borough, shall take and bear the name of the mayor, aldermen, and burgesses, but the act was dealing with cities as well as with boroughs. By the Interpretation Clause "burgess" is to mean "citizen" in the case of a city, and the object of such a clause is to prevent repetition. Therefore, in cases of cities, the 6th section is to be read as if printed "mayor, aldermen, and citizens." This reading is confirmed by the clause (137) which refers to "a citizen of the city of Oxford," and "a burgess of the borough of Cambridge." The misdescription of the corporation must therefore be amended—costs of the application in the court below to be paid by the corporation, but no order made in respect of those in the present appeal.

*Hemmery v. Dingwall.* July 7th, 1846.

ENLARGING PUBLICATION. NEW ORDERS.

When the defendant will not be prejudiced, the plaintiff may have the time for passing publication enlarged, upon paying all the costs of the application.



Mr. Willcock applied, on behalf of the plaintiff, for an order to enlarge the time of passing publication. The Vice-Chancellor of England had refused a previous application, being of opinion that there were no grounds for the motion. By the 12th of the New Orders of May, 1846, months not expressed to be calendar are to be computed as lunar. The solicitor had overlooked this distinction. The suit involved the investigation of very complicated accounts, and the learned counsel stated that it had been, latterly at least, diligently prosecuted. After notice of this appeal the defendant had given notice of a motion to dismiss the bill for want of prosecution, but could not possibly be heard before the long vacation, and therefore would not be prejudiced by the court conceding the plaintiff's application.

Mr. Romilly and Mr. Southgate urged that no case had been made out for the indulgence prayed. The mistake of the solicitor could not be advanced as a reason for it. If the application should be granted, they submitted that the plaintiff should pay the costs of the present motion, of that before the Vice-Chancellor, and of the defendant's notice to dismiss.

The Lord Chancellor thought that upon these terms the application might be granted; but parties must not speculate on the indulgence of the court. The present case rested entirely upon the fact, that the defendant would not be thereby delayed, as he would not be able to proceed until the long vacation. The mistake of the solicitor was no justification, as the words of the order are explicit, and it is the duty of that part of the profession to be acquainted with the practice.

Time enlarged until the 1st day of Michaelmas Term.

#### **Rolls Court.**

*Jope v. Pearce.* May 22, 1846.

#### **PAYMENT OF MONEY OUT OF COURT. — EVIDENCE OF MARRIAGE.**

*On an application for payment out of court of a fund belonging to a married woman, the court will not dispense with the production of a register of the marriage, although the marriage may have been solemnised abroad; unless evidence is produced to show that a certificate of the register could not be obtained.*

A PETITION was presented in this case for payment to the appointee of Deborah Pope, formerly Deborah Jope, of a sum of stock which had been transferred to her account previous to her marriage, on an affidavit of no settlement. The affidavits in support of the marriage was made by the Baptist minister who performed the ceremony, his deposition merely stating, that he joined the parties together in the bonds of holy matrimony on the day mentioned in the affidavit. The marriage took place in America, and it was stated that it was not the practice among Baptist congregations there to keep any register of marriages.

Mr. Rogers for the petitioner, and Mr. Miller for the defendant, the trustees. The Master of the Rolls said, the mere statement of the parties having been married, was not sufficient, without the production of a copy of the register of the marriage, and if that document could not be produced, some evidence should be given to satisfy the court that no register was kept, and that the usual evidence required in such cases could not therefore be furnished.

#### **Vice-Chancellor of England.**

*Brodley v. Teale.* June 12th, 1846.

#### **PARTNERSHIP.—PAYMENT OF MONEY INTO COURT.**

*The court will not, on a bill filed by a partner for an account of partnership transactions, order payment into court of a balance admitted by the defendant to be due from him to the partnership, unless he admits the amount to be in his hands.*

THE bill in this case was filed to carry into effect an agreement for the dissolution of a partnership, and to take an account of the partnership assets. It appeared that the plaintiff under a misconception of the amount of the book-debts and stock-in-trade, agreed to accept the sum of 150*l.*, which he considered to be the amount remaining in the hands of the defendant to which the plaintiff would be entitled as his share of the surplus after providing for the partnership liabilities; but afterwards discovering his mistake, he refused to be bound by his offer. The defendant by his answer insisted, that the plaintiff was bound by his agreement, and offered to pay the 150*l.*; and upon this latter offer a motion was now made on the part of the plaintiff, that the defendant might be ordered to pay the 150*l.* into court, upon the ground, that the effect of his answer must be considered as an admission that this sum was in his hands.

Mr. Southgate, for the motion.

Mr. Chandless, contra.

The Vice-Chancellor said, that in order to entitle a plaintiff to call upon a defendant to pay money into court, there must be a clear admission of the money being actually in his hands, or of its having been received by him. There was no such admission in this case, and the motion must therefore be refused with costs.

#### **Queen's Bench.**

(Before the Four Judges.)

*The Queen v. The Great North of England Railway Company.* Easter Term, 1846.

#### **PRACTICE.—TIME WHEN APPLICATION CAN BE MADE TO SET ASIDE AWARD.**

*A cause was referred by order of nisi prius, the arbitrator to have power to state on the face of his award such points of law as either party might require for the opinion*

of this court. The verdict was made November 23, 1884, and on the 16th of the same month notice of the verdict was given to the defendants. On the fourth day of Hilary Term following a rule nisi was obtained by the defendants for setting aside the verdict and entering a verdict on several issues.

Held, that the application to set aside the award was made too late. That, where a cause only is referred to an arbitrator, the same rule prevails in awards as it does in new trials, and that a motion be set aside, an award must be made within four days after publication, which period is to be calculated from the time when a party receives notice that the award has been made.

An action was referred by an order of *missi prius*, in 1842, in which a verdict was to be taken for the plaintiff, subject to the award of a barrister, and that he should have power to state on the face of his award such points of law for the opinion of this court as either of the said parties might raise and require him so to state. The arbitrator by his award directed the verdict for the plaintiff to stand, subject to be reduced, if certain items allowed for the plaintiff ought not to have been allowed. The award was made on the 13th November, 1844, and on the 16th of the same month the defendants received notice of the decision of the arbitrator. On the 4th day of Hilary Term following, a rule was obtained by the defendants for setting aside the award and entering a verdict for them on several issues.

Mr. Martin, Mr. Grainger, and Mr. Rew contended, that according to the practice of the court, the application to set aside the award had not been made within the proper time. In cases where the cause and all matters in difference are referred, the general rule of practice is, that an application to set it aside may be made at any time before the last day of the next term after the making and publishing of the award. But in cases like the present, where the cause only is referred, then the practice is the same as in motions for new trials which must be made within four days. This application ought to have been made within four days after the making and publishing the award. The subject is very fully discussed by Mr. Justice Coleridge, in *Allenby v. Proudlock*.<sup>a</sup> The same rule appears to have been laid down by the court in *Heyward v. Philipps*,<sup>b</sup> and *Moore v. Batten*.<sup>c</sup>

The Solicitor General, (Sir F. Kelly) and Mr. Addison, contra. Opinions of different judges have been expressed on this subject, but the rule of practice has never yet been decided after argument. An opinion was intimated by Coleridge, J., in *Allenby v. Prosser*,<sup>2</sup> but it was never decided, that a motion to set aside an award made in term may not be made after four days from the publication. It is a matter of

discretion with the court. *MacArthur v. Campbell*. [Lord Deane, C. J. We feel bound not to hear a motion for a new trial out of the four first days, unless under circumstances which amount to a motion having been made.] That is a rule of practice firmly established and of general notoriety. There is a great difference between an award and a motion for a new trial; it may frequently happen that the parties cannot prepare affidavits and be ready to make the application within four days of publication. The facts stated for the opinion of this court make it more in the nature of a special case than a motion to set aside an award, and therefore does not come within the rule. The defendants ought to be heard on the points reserved for the opinion of the court. [Patteson, J., referred to *Anderson v. Fuller*.]

Lord DENMAN, C. J. It is quite clear that some limitation must exist as to this part of the practice of the court; and the limitation of 4 days is part of the practice of the court proceeding from the general persuasion on the subject which has been constantly acted upon. It appears to have been consistently maintained from the year 1836, when Mr. Justice LITTLEDALE, in *Morton v. Burge*,<sup>s</sup> expressed the settled opinion, that a motion of this sort must be made within 4 days of the publication of the award. Mr. Justice COLERIDGE has lately in *Allenby v. Proudlock*,<sup>b</sup> adopted and acted on the same rule. Then the case of *Anderson v. Fuller*,<sup>c</sup> is a complete decision on this point; it lays down a rule which entirely and fully applies to this case, and the present case cannot be distinguished from it.

Mr. Addison says, that this is a special case and not an award, and that not judgment could be given upon it. Then that objection would be as good ten years hence as it is now, and at the end of that time judgment could no more be entered then than now. As to the difficulty of making the affidavit, that would apply to a case tried in term, and that is a matter which cannot be looked to. We must lay down a general rule, and we establish a rule such as has been laid down by the Court of Exchequer. It is very desirable that these motions should be made within 4 days from the publication of the award. The only rule as to the date of publication is that which is derived from the notice that the award has been made. The moment that notice has been given, publication must be supposed to have taken place. The case of *Macarthur v. Campbell* lays down a rule which is completely applicable in this case.

Mr. Justice *Patteson*. I consider the case of *Anderson v. Fuller* as decisive on this point. There an arbitrator found a verdict for the plaintiff, and then set forth facts for the opinion of the court, and it was held on motion to enter a verdict for the sum named by the arbitrator was in effect a motion to set aside the award, and came within the same rule. The verdict

• 5 B. & Ad. 518.      ' 4 Mea. & Wel. 470.

<sup>c</sup> 4 Ad. & El. 973.      <sup>d</sup> 4 Dowl. P. C. 54.

4 Mee. & Wel. 470.

4 Dec.

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will stand for the plaintiff, and it is the business of the defendant, if he disputes it, to apply to have it entered otherwise. The party ought to come within 4 days after he receives notice of publication; at least such is the general rule. I will not say that there are no circumstances whatever in which an application might not be made after that time, but some particular circumstances must be shown before they could hope to get a rule. The same practice prevails in awards as in verdicts, and in the present case no reason is shown why they did not think fit to come earlier, and no cause has been made out which should justify the court in its discretion for deviating from the ordinary rule of practice.

Rule discharged.

#### Queen's Bench Practice Court.

Gurney v. Gurney. Easter Term, 1846.

#### RULE FOR SPECIAL JURY. — WHEN NOT TOO LATE.

*On the day before Good Friday, being two days after notice of trial, and more than six days before the sittings for which notice had been given, the defendant obtained a rule for a special jury, but the offices being closed during the Easter holidays, an appointment to nominate could not be obtained till the day before the sittings, when the rule and an appointment for a subsequent day were served, the rule having been served alone two days before. If the holidays had not intervened the rule might have been obtained and served on the day after Good Friday.*

*Held, that there had been no such laches as to induce the court to discharge the rule.*

In this case, notice of trial was given for the first Middlesex sittings in Easter Term. On Thursday the 9th of April, the defendant obtained a rule for a special jury, but it was not served till the following Monday. The 10th was Good Friday, and, in consequence of the Easter holidays, the master's offices were closed till the 15th, (the first day of term), on which day, at 12 at noon, a copy of an appointment to nominate the jury on the 18th, together with another copy of the rule, was served on the plaintiff's attorney. On the 16th of April,

*Lush* moved to discharge the rule upon the ground, that the defendant had been guilty of laches, and that his only object was delay, citing *Phelps v. Keily*, 4 Scott, N. R. 376; 3 M. & G. 883, S. C. A rule nisi having been granted,

The defendant's attorney, in answer, made affidavit, stating that on Saturday the 11th of April, his clerk went to the master's office for the purpose of obtaining an appointment to nominate the jury, but that he found it closed; that the rule was not served on the 9th because an appointment to nominate had not been obtained; and he denied that the rule had been obtained for delay. Upon this affidavit,

*Willis* now showed cause. The defendant is entitled to a special jury, for having obtained his rule more than six days before the day for which notice of trial was given, he has complied with the requirements of the general rule of Hil. 1 Vict. c. 2.\* According to the practice, the rule for the special jury and the master's appointment to nominate are served together, and this could not have been done in the present case till the 15th of April, for the Easter holidays having commenced on the day after that on which the rule was obtained an appointment could not be obtained till the re-opening of the offices.

*Lush*, in support of the rule, was then called upon. A mere strict compliance with the terms of the rule of court is no answer to this application; the rule ought to have been obtained and served early enough to enable the plaintiff, in the ordinary course of business, to insure the attendance of a special jury on the day appointed for trial, *Phelps v. Keily*, 4 Scott, N. R. 376; 3 M. & G. 883, S. C. The defendant might have obtained a rule on the 7th of April, when notice of trial was given. [*Wightman, J.* He was not bound to do so.] But had he done so there would have been ample time to obtain and serve an appointment to nominate before the holidays. At all events, the rule ought to have been served on the 9th, as soon as it was obtained, and not delayed till the 13th. [*Wightman, J.* But if it had been, you could not have struck a jury or issued a distringas whilst the offices were closed.] The object of the rule of court will be entirely defeated if parties are allowed to obtain the rule for a special jury at a time when, in the course of business, it is utterly impossible to take the necessary proceedings to go to trial pursuant to notice.

*Wightman, J.* I do not see that the defendant has been guilty of any irregularity. The rule for a special jury was obtained more than six days before the day appointed for trial, and if the Easter holidays had not intervened he might have served it on the 10th of April. If the plaintiff had been served on the 9th, he could not have passed the jury process in time to proceed according to his notice of trial; and I must take notice, that the whole doctrine of laches is founded upon this:—that the party complaining of it has been put in a worse situation than if there had been no laches. That does not appear to have been the case in the

\* By which it is ordered, "That no rule for a special jury shall be granted on behalf of any defendant, or plaintiff in replevin, except on an affidavit, either stating that no notice of trial has been given, or if it has been given, then stating the day for which such notice has been given; and in the latter case no such rule is to be granted, unless such application is made for it more than six days before that day: provided that a judge may on summons order a rule for a special jury to be drawn up at any time."

present instance, and I am of opinion that this rule should be discharged, but without costs.

Rule discharged without costs.

### Court of Bankruptcy.

*In re Benjamin Kent.* July 4, 1846.

LODGING-HOUSE KEEPER, PROVIDING BOARD FOR LODGERS, WHEN A TRADER WITHIN THE MEANING OF THE 6 GEO. 4, C. 16, S. 2.

BENJAMIN KENT, late of Radley, Berks, and now of Rosherville, Kent, filed a declaration of insolvency under the 5 & 6 Vict. c 122, s. 22; and subsequently upon his own petition a fiat in bankruptcy issued against him under the 7 & 8 Vict. c. 96, s. 41, bearing date the 6th June, 1846. On the 9th June, 1846, the fiat was opened before Mr. Commissioner Fane, and a deposition was produced in which it was stated, that the said Benjamin Kent for a specified period, carried on the business of a board and lodging-housekeeper, at Radley, in Berks, by keeping a certain house there, and providing meat, drink, and entertainment for persons lodging in the said house, for a profit, and that he sought and endeavoured to get his livelihood thereby, as others of the same trade and business usually did. The learned commissioner thought the proof of trading upon this deposition insufficient, and refused to make the adjudication of bankruptcy under such fiat.

Mr. Tyrrell now applied to the commissioner upon additional depositions, from which it appeared, that the bankrupt kept a house much larger than was necessary for the occupation of his own family, at Radley aforesaid, that he advertised in the local papers for persons to board and lodge, and that certain persons, whose names were mentioned, and some of whom joined in the affidavits, lodged with the bankrupt for longer or shorter periods, and were supplied by him with victuals, sometimes in their own apartments, and occasionally at the table of the bankrupt. The learned counsel submitted, that upon the facts disclosed on these affidavits, Benjamin Kent was a trader, subject to the bankrupt laws, within the 6 Geo. 4 c. 16, s. 2. The section referred to provided, that "victuallers, keepers of inns, taverns, hotels, or coffee houses," should be deemed liable, but the decided cases showed, that under this description a person in the bankrupt's position was included. The learned counsel cited *Smith v. Scott*, 9 Bing. 14; *Gibson v. King*, 10 Mees. & W. 667, and *Ex parte Daniel*, 7 Jur. 1044. In the first of these cases it was held, that the keeper of a private lodging-house, over which there was no sign, who took in her guests to board, and made a profit by supplying them with provisions if required, fell within the word "hotel-keeper." That case was recognised in all the subsequent decisions, and the result appeared to be, that whereas the old cases entered into nice distinctions as to the circumstances under which provisions were

supplied to boarders or guests; the recent authorities established the rule, that a person keeping a board and lodging-house, in the ordinary understanding of the term, was a trader within the meaning of the bankrupt laws.

Mr. Commissioner Fane, upon reading over the additional depositions, and referring to the authorities cited, declared that in his opinion the additional depositions rendered the proof of trading sufficient; and as he entertained no doubt as to the other requisites to support a fiat, he adjudicated the petitioner a bankrupt.

### NOTES OF THE WEEK.

REFERRING to our first article for the promotions consequent on the change of ministry, we may here add some other legal appointments.

#### NEW QUEEN'S SERJEANTS.

Lord Chancellor Lyndhurst, just before retiring from office, appointed Mr. Serjeant *Talford* and Mr. Serjeant *Manning* to the higher dignity of Queen's Serjeants, by which they take precedence of all the Queen's counsel.

#### MASTER LYNCH'S CLERK.

We are informed that our statement in the number for the 20th of June last, "that *J. W. Barrett*, Esq., of Gray's Inn, had been appointed Master Lynch's chief clerk," is inaccurate, Mr. Barrett never having received any such appointment. His son *George Barrett* has received the appointment. On the supposition that the clerk who was appointed was a certificated attorney, and there being only one of that name in Gray's Inn who appeared in the Law List, the senior gentleman was thus by mistake named.

#### SOLICITOR OF EXCISE.

We are informed that instead of Mr. Douglas, Mr. Bateman has been appointed Solicitor of Excise. This gentleman is the author of several works relating to the Laws of Excise and Auctions; but it does not appear that he is either a barrister or solicitor. How this can properly be we know not.

#### LEGAL OBITUARY.

To the respected name of Lord Chief Justice Tindal, who died on the 6th inst., at Folkstone, of whom a notice will be found at p. 234, ante, we regret to add another esteemed member of the profession, viz., *Robert Vaughan Richards*, Esq., Q. C., who died on the 2nd inst. He was the third son of Chief Baron Richards, and was called to the bar on the 26th Nov. 1819, and went the Oxford and Welsh Circuits.

## ARRANGEMENT OF BUSINESS AT THE JUDGE'S CHAMBERS.

The Right Honourable the Lord Chief Baron will attend in the Exchequer Hall, to transact business during the absence of the judges on their circuits, when the following regulations will be strictly enforced until further orders :—

None but original summonses will be allowed to be placed on the file.

Adjourned summonses will be heard at ten o'clock.

The summonses on the general file will be called at 10 o'clock, when they will be numbered, and heard in regular order after the adjourned summonses.

Counsel will be heard at two o'clock in the order in which the causes stand on the counsels' file.

Affidavits on *ex parte* applications, (except for orders to hold to bail,) must be left, and the orders applied for next day.

All affidavits must be properly endorsed with the names of the parties, the names of the attorneys, and the nature of the application. Those produced or referred to in support of any cause, before his lordship, must be filed.

Parties not in readiness when their numbers are called, will be passed over until the general business of the day is disposed of.

## PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

**Royal Assents.** (3rd July, 1846.)

Railway Companies Dissolution.

Friendly Societies.

Superintendent of Convicts.

**House of Lords.**

**NEW BILLS.**

Recovery of Small Debts and Demands in England.—For 2nd reading.

Juvenile Offenders. For 2nd reading. Marquis of Westminster.

Judgment Creditors.—Passed.

General Registration of Deeds. — Lord Campbell.

Religious Opinions Relief.—Re-committed. Lord Chancellor.

Correction of Clerks (Church Discipline). In Committee. Bishop of London.

Punishment for deterring Prosecutors, Witnesses, &c.—In Committee. See the bill, 31 L. O. 472. Lord Denman.

Corresponding Societies and Lectures.—For 3rd reading.

Small Debt Courts :

St. Austell. In Committee.

Birkenhead. In Committee.

**House of Commons.**

**NEW BILLS.**

Real Property Conveyance.

Bankruptcy and Insolvency.—Re-committed. See the bill, 31 L. O. 569. Mr. Hawes.

Roman Catholics' Relief.—Re-committed. See the bill, p. 402, *ante*. Mr. Watson.

Small Debts Court :

Somerset. 2nd reading,

Northampton.

Poor Removal. — Re-committed. Sir J. Graham. See analysis of the bill, 31 L. O. 473.

Highway Laws Amendment.—For 2nd reading. Sir James Graham.

Metropolis Interments. Mr. Mackinnon.

Death by Accidents Compensation. For 2nd reading,

Deodands Abolition. Mr. Bouverie.

Total Abolition of the Punishment of Death. Mr. Ewart.

County Rates. For 2nd reading.

Administration of Justice at Quarter Sessions.—For 2nd reading. Mr. Frewen.

Charitable Trust Accounts.—For 2nd reading. Mr. Hume.

## THE EDITOR'S LETTER BOX.

We have received a copy of the Annual Report of the United Law Clerks' Society, and hope to find room for it next week,—accompanied by a report of the speeches at the Annual Meeting, at which Mr. Baron Platt kindly presided.

The suggestions relating to the Examination of Articled Clerks, and the best means of aiding their studies, shall be considered.

The statutes in any way effecting alterations in the law, shall be given as early as possible, and followed by whatever notes may be requisite. They will be included in our enlarged space, without any expense of double numbers.

# The Legal Observer.

SATURDAY, JULY 18, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## CONSTRUCTION OF RAILWAY ACTS.

THE systematic disregard of the rights and interests of individuals and the undue influences which notoriously prevail in respect of what are called private acts of parliament, induce many considerate persons to believe that the multiplication of railway acts will lead to consequences more extensively injurious to the owners of private property than is at present generally conceived. Be this as it may, we own we do not regret to find the courts exercising their authority to keep within strict legal limits those powerful bodies whom one of our correspondents some time since felicitously described as “chartered libertines.”

Entertaining these views, we have some satisfaction in referring to the construction put upon a railway act<sup>a</sup> by the Court of Exchequer, in *Michaelmas Term* last,<sup>b</sup> not so much from any importance we attach to the decision itself, as for the spirit displayed by the judges, and the sentiments to which they gave utterance.

The act in question gave the company power to agree with the owners of lands which the company were empowered to take for the purposes of the railway for the absolute purchase of the owner's interest therein, and provided that, if any difference should arise between them as to the value of lands or the compensation to be made in respect of them, or if, by reason of absence, the owner should be prevented from treating, or if he should fail to disclose or

prove his title, the amount of compensation should be settled by a jury in the usual manner. By a subsequent section, if the owner of lands, on tender of the purchase money or compensation agreed or awarded to be paid, should refuse to accept it, or if he should fail to make out a title to the lands in respect of which such purchase money or compensation should be payable to the satisfaction of the company, or if he should be gone out of the kingdom, or could not be found, or should refuse to convey, it should be lawful for the company to deposit the purchase money or compensation payable in respect of such lands in the Bank of England, in the name of the Accountant General, and thereupon all the interest in such lands, in respect whereof such purchase money or compensation should have been so deposited, should vest absolutely in the company.

The Manchester, Bury, and Rossendale Railway Company having purchased the reversion of the lands in dispute, sent to the plaintiff (*Hutchinson*) notice in July, 1844, under the provisions of the act, of their intention to treat with him for his interest, and in November following made him an offer of 3,500*l.*, accompanied by notice of their intention to summon a jury to assess the amount of compensation to which he was entitled. Mr. *Hutchinson* not having made any reply to this communication, an inquisition was held on the 13th January, 1845, and the jury awarded the plaintiff 4,000*l.* by way of compensation. This sum the company, without any further application to Mr. *Hutchinson*, paid into the Court of Chancery, as directed by the statute, and without more, entered upon the land and began to construct their railway. Mr. *Hutchinson* thereupon brought an action of ejectment,

<sup>a</sup> 8 Viet. c. 60, Loc. & per.

<sup>b</sup> *Doe d. Hutchinson v. The Manchester, Bury, and Rossendale Railway*, 14 Mees. & W. 687.

and at the trial, *Cresswell, J.*, told the jury, that in order to entitle the company to pay the compensation money into the Court of Chancery and take possession of the land, they were bound to call upon the lessor of the plaintiff, after the amount of compensation had been assessed, to make out his title to the land, and as they had neglected so to do, their possession was wrongful. A verdict was therefore taken for the plaintiff, with leave for the company to apply to the court.

A motion was afterwards made to enter a verdict for the defendant, upon the ground, that there had been such a failure on the part of the plaintiff to make out a title to the land, as entitled the company to pay the compensation money into court and take possession. It was also pressed upon the court, that the company having commenced their works on the land, were placed in a position of great difficulty, and that if a rule were granted, it might lead to an amicable arrangement.

The *Chief Baron*, however, observed, that the judges would not be justified in raising doubts in the minds of others, where none were entertained by themselves, merely that parties might have an opportunity of coming to an arrangement. The alternatives mentioned in the act of parliament, upon which the company were authorised to pay the compensation money into the Court Chancery, were all of them alternatives arising *after* the assessment of damages, and after the compensation money had been ascertained. It was then clearly the duty of the company to call upon the party to make out a title to the land, if he were willing to accept the amount, and it was only on his failure to do so they were entitled to pay the money into Chancery. The question was in substance this:—Is a railway company, or any other company, entitled to say to a person whose land they require, "Because you would not render us any assistance before we went before the compensation jury, we will take your land without any further communication."

*Parks, B.*, was also of opinion that the provision empowering the company to pay the purchase or compensation money into the Court of Chancery was *prospective*, applying to the case where the party failed to make out his title to the land after the inquisition had been executed, and the money had been ascertained and become payable. There was a good reason for this, as a party who was unable in the first

instance to make out a title might find the means of doing so after the inquisition, and ought to have the means afforded him of remedying the defect, before he is compelled to apply to the Court of Chancery.

*Alderson, B.*, remarked, that the statute gave the company power to take a man's land without any conveyance at all, for if they could not find out the party who could make a conveyance to them, or if he refused to convey, or failed to make out a title, they had only to pay their money into Chancery, and the land was at once vested in them by a parliamentary title. In order to enable them to exercise such a power they must follow the words of the act strictly. When a party failed to make out a title before the assessment of compensation, either from inability or want of inclination, it was very reasonable he should have an opportunity afforded him to remedy the defect after the decision of the jury which placed him in a different position. There ought to be a *locus penitentie* allowed; but if, after the change of circumstances and the information thus afforded, the party still refused to disclose his title, the company might proceed without him. This was the construction which the act admitted, and there was no reason to depart from it because it was in favour of a party whose land was taken from him compulsorily and by a very stringent process.

*Rolfe, B.*, agreed with his learned brothers, that the clear object of the act was, to enable parties claiming compensation for land to make out a good title after the amount they were to receive had been ascertained. When that was done the company were bound to call upon the party to show his title, and until they had done so they had no right to take possession of his land and pay the compensation money into Chancery. Neither the letter nor the spirit of the act admitted of such a construction, and it would be most unjust if it did.

Upon these grounds the barons were unanimously of opinion that the ruling of *Cresswell, J.*, at the trial was right, and they therefore refused to grant a rule.

In the course of the discussion, *Pollock, C. B.*, pointedly observed, that the clause containing the provision, "if he shall fail to make out a title to their satisfaction," was worded very favourably to the company. As the provisions of acts of this description come to be judicially considered, we have no doubt that many other

clauses will be discovered, in which the objects and interest of the framers are rendered sufficiently obvious by the disregard evinced for the interest and rights of others.

The whole system of railway legislation requires to be put on a different footing. The assessment of compensation by a jury presided over by the under-sheriff, is at best a clumsy contrivance. As the property in railways becomes more diffused, and the ramifications of railway influence is more extended, the result of inquisitions of this nature will become more unsatisfactory. Already whispers are heard of the undue influences exercised by certain adroit law agents of railway companies on those who were summoned on compensation juries. It may be that these rumours are wholly without foundation. Still, it is not unreasonable that inquisitions under railway acts should be subject to some efficient control, and that a party who thinks himself aggrieved by an assessment which deprives him of his estate without adequate compensation, should have some means of obtaining redress by a rehearing, in common with a party to an action of debt, against whom a verdict has been returned through error or inadvertence, even for so trifling a sum as 5*l*. In such cases the courts of law interfere every day, at the instance of the injured party, and either set the verdict right or grant a new trial; whilst practically there is no appeal from the decision of a compensation jury. This is one amongst many anomalies that may be traced to the crude and hasty manner in which statutes have been prepared and obtained the legislative sanction. We are now said to be on the eve of great social improvements, and it is hoped that the importance of this subject will not only prevent it from being overlooked, but ensure for it an early consideration from those who have sagacity to discern its importance, and sufficient influence to give effect to practical amendments.

## NOTES ON EQUITY.

### JURISDICTION TO SERVE PROCESS ABROAD. —CASE OF FOREIGNERS.

ALL jurisdiction is limited to the territory of the judge. Consequently, either the *person* to be affected by the decree—or the *thing* which forms the subject-matter of the litigation must be within his judicial reach—otherwise the entire proceeding will be nugatory.

When therefore both the *person* and the *thing* are in a jurisdiction different from that of the complainant—the general rule is, that he must make his demand in the defendant's jurisdiction, according to the maxim, *Actor sequitur reum*.

But in the case of land situate in a foreign country,—if the parties are resident here, the courts of equity in this country will exercise jurisdiction,—because *aequitas agit in personam*. And, although they cannot bind the land, they can compel the owner of it to perform his agreement.

But what shall be considered a foreign country with reference to this matter of jurisdiction? The united kingdom of Great Britain and Ireland is *one*. It nevertheless so happens, that for purposes of jurisdiction, England, Scotland, and Ireland, are distinct realms. Hence, great inconvenience was frequently experienced in cases where, for example, a party, usually residing in this country, transferred himself to Dublin or to Edinburgh, perhaps for the very purpose of evading service of subpoena. With a view to correct this evil, the 2 Will. 4, c. 33, enacted, that courts of equity in England and Ireland should have power in cases relating to land within their jurisdictions, to direct service of process in *any part of the united kingdom*. And by the 4 & 5 Will. 4, c. 82, the provisions of the 2 Will. 4, c. 33, are applied to suits concerning *charges* upon land, or relating to money in the public stocks, and shares in public companies; and the rule as to service of process is extended to defendants "who shall appear by affidavit to be resident in *any place*, specifying the same, *out of the united kingdom*." So that by virtue of these enactments, service might not only be *extra territorium judicis*, but even *extra territorium Regni*. This being so, two acts were passed in the present reign, (3 & 4 Vict. c. 94, and 4 & 5 Vict. c. 52,) giving power to the Lord Chancellor, with the advice and consent of the Master of the Rolls and the Vice-Chancellor, to make rules and regulations for facilitating the administration of justice in the Court of Chancery, which rules and regulations should be as binding (unless objected to by vote of either house of parliament) as if expressly enacted by the legislature. In pursuance of the great powers thus conferred, the General Orders of August, 1841, and of May, 1845, were framed. Now by the 38rd Order of May, 1845, where a defendant is beyond the jurisdiction the



court is enabled to order service of subpœna upon him, without reference to the question whether the suit relates to land, stocks, or shares, within the statutes of the 2 Will. 4, c. 38, and 4 & 5 Will. 4, c. 82, the court having a discretion given to it to order such service in any suit whatever. This was decided by Vice-Chancellor Wigram, in a late case, (*Whitmore v. Ryan*), which will be found in the number just published of Mr. Hare's reports.\* His Honour in disposing of the case thus expressed himself:—"I do not deny that great weight is due to the observation which has been made as to the extensive nature of the 33rd Order; that it empowers the court, if it thinks fit, to order a subpœna to be served upon a foreigner who has never been within the jurisdiction. But my opinion is, that the order does in terms give the authority to do so; and I cannot see that such an order exercised with discretion does in any respect violate the rules of natural justice. The order does not give the plaintiff a right to call upon the court in all cases to order service of the subpœna abroad, but it gives the court power to do so, in exercise of a sound discretion according to the circumstances of the case. The material question in judicial proceedings is, whether the defendant has had due notice of the proceedings so that he may be enabled to come in and make his defence, and not whether he receives that notice at Boulogne or Dover." His Honour, on a subsequent day said—"he thought the power of the court should be exercised with great circumspection;" but he would not allow any doubt to be thrown on the existence of the jurisdiction.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### DISSOLUTION OF RAILWAY COMPANIES.

9 & 10 VICT. c. 28.

An act to facilitate the Dissolution of certain Railway Companies. [July 3, 1846.]

Whereas it is expedient to facilitate the dissolution of certain railway companies as hereafter mentioned, and to afford facilities for the winding up the concerns of such companies: May it therefore please your Majesty that it may be enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That when any person or companies, before the passing of this act, shall have entered into any

contract usually called a subscription contract, or any other agreement or agreements, in writing or otherwise, for the formation of a company or partnership for making any railway which cannot be carried into execution without obtaining the authority of parliament, and in respect of which an act shall not before the passing of this act have been obtained, it shall be lawful for such persons or companies to dissolve the said company or partnership, contract or agreement, in manner herein-after mentioned, and that whether or not such contract or agreement shall contain any powers or provisions for dissolution of the company or partnership intended to be thereby formed: Provided, nevertheless, that nothing herein contained shall prevent any such persons or companies from exercising any such power or provision for dissolution in their contract or agreement contained, if they shall see fit, at any time before availing themselves of the powers in this act contained: Provided also, that the provisions of this act shall be taken to apply to any contract or partnership for the making any railway, notwithstanding that the agreement or partnership may relate to any other objects in connexion therewith; and (unless a separate capital and separate subscription shall exist as regards the different objects) then, on a dissolution under the provisions of this act, the dissolution shall extend to the whole objects of the contract or partnership.

### Notice of meetings to dissolve.

2. And be it enacted, That it shall be lawful for the committee, provisional directors, or other persons by such contract or agreement as aforesaid intrusted with the management and carrying into effect of the undertaking, and who are herein-after called "the committee," to call a meeting of the shareholders for the purpose of determining whether the partnership or company so as aforesaid intended to be formed (and which is herein-after called "the company") shall be dissolved; and that if such meeting shall determine, as after mentioned, that the company shall be dissolved, then, as from the date of the resolution come to at such meeting the company shall be taken to be dissolved, and the committee shall not have power to proceed any further with the undertaking.

3. And be it enacted, That it shall be lawful for any five shareholders, as after defined, by writing under their hands, to require the committee to call a meeting for the purpose aforesaid: and that if the committee shall refuse or neglect, for six days after any such requisition shall have been left at the registered place of business of the company, as regards England and Ireland, and as regards Scotland, at the usual place of business, or shall have been served personally on any member of the committee, to call such meeting by notice as after mentioned, or if for any reason whatever such meeting shall not be convened and held in pursuance of the directions herein contained, it shall be lawful for any five shareholders to call such meeting; and after any such requisition shall have been left or served as aforesaid, it shall

not be lawful for the committee or any of them to make any payments out of the monies of such company, except in discharge of *bond fide* debts or liabilities, or in performance of contracts or engagements, previously entered into, and in payment of the expenses of calling and holding such meeting or any adjourned meeting, nor to enter into any contracts or engagements on behalf of the company or affecting the property thereof, nor to issue any shares or scrip or of representing the capital stock of such company, until the meeting called as aforesaid shall have determined the question of dissolution.

4. And be it enacted, That the meeting shall be held to have been duly called, although the votes of the parties calling the same, or any of such votes, shall be disallowed at the meeting by the scrutineers to be appointed as hereinafter mentioned.

5. And be it enacted, That the calling of any such meeting shall be by notice, signed either on behalf of the committee by any one member of the same, or in case the meeting shall be called by the shareholders, then by the shareholders calling the same, such notice to be advertised in the *London Gazette* eight clear days and not more than fifteen days before the time to be therein fixed for holding such meeting, and also, within the before-mentioned limits as to time, in three London daily newspapers; that in the case of railways to be made in Ireland, the said notice shall also be advertised, within the before-mentioned limits as to time, in the *Dublin Gazette* and in two newspapers in common circulation in the city of Dublin; and as to railways to be made in Scotland, the said notice shall also be advertised, within the before-mentioned limits as to time, in the *Edinburgh Gazette* and in two newspapers in common circulation in the city of Edinburgh.

6. And be it enacted, That every notice of meeting shall specify the day, hour, place, and purpose of meeting; and the parties entitled to be present at such meeting shall be the persons producing the shares, scrip, or receipts hereinafter defined, or the proxies after mentioned.

*Proceedings at meetings.*

7. And be it enacted, That every meeting so called shall elect a chairman within one hour of the time appointed for holding such meeting, and that the person to be in the chair at every such meeting shall be some member of the committee, to be elected by a majority of the members of the committee present at the meeting, and in case the votes of the members of the committee present shall be equally divided, or if from any cause there shall be no member of the committee so elected, then some shareholder entitled to vote shall be elected by the meeting; and every person present, either in respect of shares or of a proxy, shall have one vote only for the election of the chairman and scrutineers; and every chairman shall have a casting vote, in addition to any other vote which he may be entitled to; and if any such chairman shall refuse to give his casting vote on the question of dissolution or

bankruptcy as after mentioned, the question shall be considered as carried in the affirmative for dissolution or bankruptcy.

8. And be it enacted, That the chairman at every such meeting shall be bound to put to the meeting any question proposed for the dissolution of the company, or as to the bankruptcy thereof, and also as to the election of scrutineers, and that no business shall be transacted at any such meeting other than the consideration of any such question so proposed, and the election of a chairman and scrutineers.

9. And be it enacted, That immediately after the election of a chairman the meeting shall proceed to elect as scrutineers three shareholders in the company, whose business it shall be to verify as after mentioned and take the votes of the shareholders entitled to vote, and cast up and declare the same; and the decision in writing of them, or of any two of them, shall be final in all respects.

10. And be it enacted, That in case it shall be discovered by or shown to the scrutineers that the chairman at any meeting is not entitled to vote as a shareholder, it shall be lawful for the meeting either to elect a new chairman or to maintain such existing chairman, but such chairman so maintained in office shall not thereby acquire the right of voting as a shareholder, or of giving a casting vote; and in case the votes shall be equally divided the resolutions shall be considered as carried in the affirmative for the dissolution and as to the bankruptcy of the company: Provided always, that all votes, acts, and deeds by any chairman not entitled to vote, or by the meeting presided over by him, given or done before the discovery of his not being so entitled, or given afterwards if he be so maintained, shall be valid and effectual; and, as regards the election of chairman and scrutineers by the votes of the parties present, and producing scrip or proxies, no objection after the election shall be made on its being shown that they were not entitled to be present.

11. And be it enacted, That at any such meeting as aforesaid, in the event of the prescribed quorum after mentioned not being present and voting at such meeting, then the chairman shall cause the votes of the persons constituting the said meeting to be taken and recorded, and shall then adjourn the same to be held at the same place, and at a day to be declared by the chairman, such day not being less than three days and not more than one week from the original day of meeting, such day and the time of meeting in the meantime, as regards any meeting held in any part of England, being advertised twice in each of three London daily newspapers, and in the case of a meeting held at Edinburgh twice in two Edinburgh newspapers, and in the case of a meeting held in Dublin twice in two Dublin newspapers; and at such adjourned meeting the votes of such persons constituting the same as had not voted at the original meeting shall be taken and recorded, and the total amount of votes given at the original and adjourned meeting shall be received as if given at one and the same meeting.

12. And be it enacted, That the only persons entitled to be present and vote at any such meeting as shareholders, by themselves or proxies, shall be those persons who shall for the time being be in possession of and produce certificates or receipts declaring parties entitled to shares in any company, or acknowledging the receipt of a deposit in such company, usually termed "scrip" or "receipts" for deposits on shares, and that notwithstanding the party in possession may not be the party to whom the same was originally granted, or that the same may not have been legally assigned to the party in possession, or notwithstanding the same may be possessed by the holder as a mere mortgagee, or in any other manner, or the same may be subject to any charge or lien, and which parties are by this act called "shareholders;" provided that nothing herein contained shall authorize more than one vote, either for dissolution or bankruptcy, to be given in respect of the same share, notwithstanding any transfer or delivery of such share after a vote shall have been given in respect thereof.

13. And be it enacted, That every shareholder shall, in voting on the questions of dissolution and bankruptcy, be entitled to one vote, by himself or proxy, in respect of every share held by him, or in respect of which scrip or receipts may have been issued or deposits paid, and that all shareholders producing such shares, scrip, or receipts shall be entitled to attend meetings and to appoint proxies according to the form contained in the schedule hereunto annexed, or in some form to the like effect; Provided always, and be it enacted, that the fact of any such party attending any such meeting shall not in anywise increase or alter, either in law or equity, his rights or liabilities.

14. And be it enacted, That the appointment of any such proxy shall be signed by the party appointing the same before a Master or Master Extraordinary of the Court of Chancery in England or Ireland, or a justice of the peace in England or Ireland, or before a sheriff or sheriff substitute or justice of the peace in Scotland, or, where such shares, scrip, or certificate shall be in possession of any parties beyond seas, the said proxy shall be signed as aforesaid before any of her Majesty's consuls or vice-consuls or a notary public; and that, on signing the same, the share, scrip, or receipt in respect of which the proxy is intended to be appointed shall be produced to the Master, justice, sheriff, sheriff substitute, consul, vice-consul, or notary public; and the number of the shares or the number of shares referred to in such scrip or receipt, and the name of the company, shall be ascertained and verified, with the number and name of the company stated in the appointment of proxy, before such Master, sheriff, sheriff substitute, justice, consul, vice-consul, or notary public.

15. And be it enacted, That to constitute a meeting under the provisions of this act for the purpose of deciding on a dissolution or bankruptcy, persons representing at least one third part of the shares in the undertaking ac-

tually issued or given, either as shares, scrip, or receipts, must be present and vote; and that for the purpose of effecting a dissolution, and as to bankruptcy, there must be either a majority of the votes of the whole scrip of the company issued as aforesaid, or at least three fifths of the votes of persons present and voting, either as shareholders or proxies, in favour of the motion for dissolution, and for the bankruptcy, if so resolved on.

16. And be it enacted, That the chairman at every such meeting shall sign a minute of the proceedings, and that every minute so signed shall be advertised within the shortest possible time in the same papers as those in which notice of the original meeting is hereinbefore required to be given; and a copy of the London Gazette containing the advertisement of such minute shall be evidence of the meeting having been duly called and held, and of the resolutions recorded having been duly passed by the majorities therein mentioned; and such minutes shall be countersigned by at least two of the three scrutineers aforesaid; and that any party signing minutes false or incomplete in any material particular, or any person who shall insert or cause to be inserted in the London Gazette any advertisement under the present clause, knowing the same to be false in any material particular, shall be guilty of a misdemeanor; and the minute directed to be advertised shall also be registered with the registrar of joint stock companies, without any fee being chargeable for such registration.

17. And be it enacted, That as regards all projected railways as aforesaid any portion of the intended line of which is situate in England or Wales, the meeting aforesaid may be held, as shall be specified in the notice calling the same, either in London or Westminster, or at the registered place of business of the company; or as regards any railways any portion of the intended line of which is situate in the counties of Lancaster or Chester, such meeting may be held at Manchester or Liverpool, notwithstanding that the registered place of business may not be at either of such places; or as regards any railways any portion of the intended line of which is situate in the county of York, such meetings may be held at York or Leeds notwithstanding that the registered place of business may not be at either of such places; that as regards railways situate in Ireland, the meetings may be held either in London or in Dublin, or at the registered places of business, as shall be specified in the notice; and that as regards railways situate in Scotland, the meetings may be held either in London or Edinburgh, or at the usual places of business, as shall be specified in the notice.

*Returns to be made.*

18. And be it enacted, That no parties shall be entitled to vote except in respect of scrip, receipts, or shares actually issued or given before the 31st day of March, 1846, and that the shares, scrip, or receipts actually issued or given shall for the purposes of this act be taken to constitute the whole number of shares in the

undertaking, although the contract may have provided that the undertaking shall consist of a greater number; and that for the purpose of ascertaining the number of shares, scrip, or receipts actually issued or given, the committee of every projected railway company to which the powers given by this act apply (except in regard to railways to be made in Scotland) shall, within twelve days after the passing of this act, be bound to send in unto the registrar of joint stock companies a return in writing under the hand of any member of such committee specifying the number of shares, scrip, or receipts actually issued or given as aforesaid, the amount of each share, and of the deposit paid or to be paid thereon; and that in case such return shall not be so sent in within the aforesaid period, every member of the committee shall forfeit a sum not exceeding 20*l.*, to be recovered in like manner as any penalty under the act intitled "An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies," is recoverable.

19. And be it enacted, That the registrar of joint stock companies shall, within six days from the passing of this act, send to the registered place of business of every such company a notice in writing under his hand requiring such return to be made; but the omission to send any such notice by the registrar shall not exempt the committee of any such company from the penalties aforesaid; and every person shall be at liberty to inspect any returns made to the registrar under this act on payment of a fee of 2*s.* 6*d.*; and the certificate of the said registrar, under his seal of office, as to the total amount of the shares, scrip, or receipts, shall be evidence as to the amount specified in such return, and for such certificate a fee of 2*s.* 6*d.* shall be paid; and no proceedings at any meeting shall be invalidated by reason of any defect or error in such return, but any party making such return knowing it to be false shall be guilty of a misdemeanor.

*Railways in Scotland.*

20. And be it enacted, That in regard to projected companies for railways to be made in Scotland the committee of every such company to which the powers given by this act apply shall, within twelve days after the passing of this act, be bound to lodge with the sheriff clerk of the shire of Edinburgh a return in writing under the hand of a quorum of such committee, or of every member thereof, specifying the number of shares, scrip, or receipts actually issued or given as aforesaid, the amount of each share, and the deposit paid or to be paid thereon; and that in case such return shall not be lodged within the aforesaid period every member of such committee shall forfeit a sum not exceeding 20*l.*, to be recovered by summary petition to the court of session at the instance of the said sheriff clerk.

21. And be it enacted, That the said sheriff clerk shall, within six days after the passing of this act, cause to be published in the *Edinburgh Gazette*, and in two newspapers in common circulation in the city of Edinburgh, a

notice by him requiring such returns to be made; and every person shall be at liberty to inspect any returns made to the sheriff clerk; and no proceeding at any meeting shall be invalidated by reason of defect or error in any such return, but any party making such return, knowing it to be false, shall be held to be guilty of falsehood and fraud, and shall be liable to prosecution and punishment accordingly; and the necessary expenses of the sheriff clerk in regard to such returns and notices shall be paid by the several committees making or bound to make returns, and shall be recovered in such amount from each of such committees as the sheriff of the shire of Edinburgh shall by a writing under his hand fix and determine.

*Meetings for dissolution or bankruptcy.*

22. Provided always, and be it enacted, That if by any reason whatever such return of the number of shares, scrip, or receipts actually issued shall not be made within one calendar month from the passing of this act, then a meeting may be called and held under the provisions of this act, and may resolve on dissolution or bankruptcy as by this act is provided, if persons representing shares as before defined equal to at least one-third part of the whole capital of the undertaking are present and vote; and any such meeting shall have the same powers as before conferred on a meeting representing one third of the shares actually issued as aforesaid.

23. And be it enacted, That, in addition to the question of dissolution, it shall be imperative on the meeting to decide whether such dissolution shall or shall not be taken to be an act of bankruptcy for the purpose of having the affairs of the company wound up under the provisions of the act after mentioned; but this provision shall not extend to the case of railways to be made in Scotland.

*Proceedings as in partnerships.*

24. And be it enacted, That in case the meeting shall resolve that the affairs of the company shall not be so wound up, or in the case of a railway to be made in Scotland if the majority shall resolve in favour of dissolution, then (subject to the power herein-after given to the committee and to creditors of the company to petition for a fiat) the affairs of the said company shall be wound up according to the rules applicable to the dissolution of partnership undertakings, and as if the undertaking had been dissolved by mutual consent.

25. Provided always, and be it enacted, That the resolution to dissolve the company, or the actual dissolution thereof, shall not alter or affect the rights of creditors or other persons not being shareholders in the company, nor any engagements whatsoever which the committee may have entered into, and shall not affect any suits pending before the passing of this act.

26. And be it enacted, That where any meeting called to consider the question of dissolution shall have determined the question of the dissolution of the company in the negative, no new meeting shall be called to consider the

question of dissolution, or any matter relating thereto, until the lapse of six months from the day in which the question was last resolved in the negative.

*Petition for fiat.*

27. And be it enacted, That it shall be lawful for any three of those who were of the committee of any company so dissolved, at any time after the dissolution thereof shall have been resolved, or for any creditor or creditors of such company to such amount as is now by law requisite to support a fiat in bankruptcy in England and Ireland, or a sequestration in Scotland, within three months after the dissolution thereof shall have been resolved, to petition that a fiat in bankruptcy may issue against such company if in England or Ireland, or that the estates of the company may be sequestrated if in Scotland.

28. And be it enacted, That upon the production of a copy of the London Gazette containing the resolution of any such meeting as aforesaid, whereby it shall be resolved that the dissolution of the company shall be an act of bankruptcy, or upon the petition of any three of the committee as aforesaid, or of any creditor under the last preceding clause, a fiat in bankruptcy shall issue against such company by the registered name or style of such company; and the company shall thereupon be deemed to be within the provisions of an act passed in the 7 & 8 Vict., intituled "An Act for facilitating the winding up of Joint Stock Companies unable to meet their pecuniary Engagements;" and of another act passed in the 8 & 9 Vict., intituled "An Act to facilitate the winding up of Joint Stock Companies in Ireland unable to meet their pecuniary Engagements," in all respects as if a fiat in bankruptcy had issued against it under the said act before its dissolution; but this last provision not to extend to Scotland.

*Sequestration in Scotland.*

29. And be it enacted, That if the company be a company for making a railway or railways in Scotland, sequestration of the estates of such company shall be awarded on petition for sequestration in common form presented in name of any three of the committee, or of any creditor or creditors of such company to such amount and on such evidence of debt or debts of such creditor or creditors as is now by law requisite for obtaining sequestration of the estates of any company liable to sequestration, there being always produced along with the petition for sequestration a copy of the London or Edinburgh Gazette containing the resolution whereby the dissolution of the company shall have been resolved upon; and such sequestration, being so awarded, shall be followed out, in regard to the election of an interim factor and trustee and commissioners, and in regard to the proof and ranking of debts, the recovery and distribution of the estate, and all other matters necessary thereto, in the same manner and by the same course of procedure, as nearly as may be, as is by law provided in cases of sequestration of the estates of trading compa-

nies in Scotland: Provided always, that such sequestration shall not extend to or affect the estates of the individual partners of the company, nor preclude the rights or remedies otherwise competent by law to the creditors of such company against the individual partners thereof, or the estates of such individual partners.

*Incorporated Companies.*

30. And be it enacted, That when any company for making any railway, actually incorporated before the passing of this act, shall have agreed to form any new or other railway or an extension thereof, and in respect of which a new or further capital shall have been agreed to be raised or contributed, and shares as herein-before defined shall have been issued or otherwise appropriated, and deposits paid thereon, then such company or partnership (as regards the new undertaking) shall in all respects be considered as a company or undertaking within the provisions of this act; and meetings shall be held, and shareholders entitled to shares as aforesaid in the new undertaking shall in manner herein-before provided have power to dissolve such new undertaking, and to decide as to bankruptcy, in all respects as is provided with regard to the companies herein-before mentioned or defined.

*Contributions.*

31. And be it enacted, That where the dissolution of a company shall have been resolved under this act, if judgment shall have been recovered or shall afterwards be recovered in any action against any member of the committee for any debt due from such company or from such committee in respect of the undertaking, the member against whom such judgment shall have been recovered shall be entitled at law to a contribution from each of the other members of such committee towards the payment of the monies recovered by such judgment, and of all costs and expenses in relation thereto, of such a share of the whole amount of such monies, costs, and expenses as would have been borne by such respective member upon an equal contribution by all the members of such committee, and may recover the contributions to which he may be so entitled, or any of them, by action or actions of debt or on the case against all or any of such other members of such committee, but so that no such member shall be liable in any such action as aforesaid for more than the share to which he shall respectively be liable to contribute under this provision.

*Delivery and taxation of bills of costs.*

32. And be it enacted, That after the dissolution of any company shall have been resolved under this act no action or suit shall be brought for the recovery of any fees, charges, or disbursements for any business done for such company by any attorney or solicitor, whether in his character of attorney or solicitor, or as agent or otherwise, until the expiration of one calendar month after a bill of such fees, charges and disbursements, signed by the claimant, shall have been delivered to the com-

mittee or official assignee authorized to wind up the affairs of such company, or left at their or his place of business; and it shall be lawful for the Court of Queen's Bench, Common Pleas, or Exchequer, or any judge of either of such courts, and they are respectively hereby required, on the application of such committee or of such official assignee, to refer such bill to be taxed and settled by any taxing officer of the court in which such reference shall be made; and the court or judge making such reference shall restrain the claimant from commencing any action or suit touching his demand pending such reference, and such taxing officer may take such evidence in relation to such bill as he may think fit; and the costs of such reference shall be paid according to the event of such taxation, (that is to say,) if such bill when taxed be less by a sixth part than the bill delivered, then the claimant shall pay such costs, and if the bill when taxed shall not be less by a sixth part than the bill delivered, then the party on whose application the reference shall have been made shall pay such costs, to be considered and allowed nevertheless as part of the costs, charges, and expenses of executing the trusts and powers of this act; and every order to be made for such reference shall direct the officer to whom such reference shall be made to tax such costs of such reference to be so paid as aforesaid, and to certify what upon such reference shall be found to be due to or from such claimant in respect of such bill, and of the costs of such reference, and after such reference as aforesaid no further or other sum than shall be so found due shall be recoverable in respect of such bill.

33. And be it enacted, That the following words and expressions shall have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or subject matter; (videlicet,)

The word "month" shall mean calendar month.

The word "person" shall include corporations.

34. And be it enacted, That this act may be amended, altered, or repealed by any act to be passed in this session of parliament.

#### SCHEDULE TO WHICH THIS ACT REFERS.

##### Form of Proxy.

Railway company.

Proxy to vote in respect of shares.

I A. B. of holder of shares, [or scrip, or receipts for shares (as the case may be)], numbered respectively [here insert the numbers, unless the shares, scrip, receipts, or letter do not show the denoting numbers], in the projected railway company, do hereby appoint C. D. of relating to the dissolution or bankruptcy of the said company, to vote, dissent, and act as he shall think proper.

Witness my hand, the day of

Taken before me, having verified the

numbers and name of the company with the documents produced to me,

Signed

And add whether,

Master extraordinary, sheriff, sheriff substitute, justice, consul, vice-consul, or notary public.

#### LEADING CASES IN CONVEYANCING.

##### NO. II.

##### SPENCER'S CASE.

Pasch. 25 Eliz.

In the King's Bench.

Coke's Reports, part 5, p. 16.

*What Covenants run with the land.*

[We proceed now with another of the great leading cases in conveyancing, and have added notes of the subsequent decisions bearing on the question down to the present time.]

Spencer and his wife brought an action of covenant against Clark, assignee to J., assignee to S., and the case was such:—Spencer and his wife, by deed indented, demised a house and certain land, (in the right of the wife,) to S. for a term of 21 years, by which indenture S. covenanted for him his executors and administrators, with the plaintiffs, that he, his executors, administrators, or assigns, would build a brick wall upon part of the land demised, &c. S. assigned over his term to J., and J. to the defendant; and for not making of the brick wall the plaintiff brought the action of covenant against the defendant as assignee; and after many arguments at the bar, the case was excellently argued and debated by the justices at the bench; and in this case these points were unanimously resolved by Sir Christopher Wray, Chief Justice, Sir Thomas Gaudy, and the whole court. And many differences taken and agreed concerning express covenants and covenants in law, and which of them run with the land,<sup>a</sup> and which of them are collateral and do not go with the land, and where the assignee shall be bound without naming him, and where not, and where he shall not be bound, although he be expressly named, and where not.

1. When the covenant extends to a thing in esse parcel of the demise, the thing to be done by force of the covenant is *quodam modo* annexed and appurtenant to the thing demised, and shall go with the land, and shall bind the assignee,<sup>c</sup> although he be not bound by express words; but when the covenant extends to a thing which is not in being at the time of the

<sup>a</sup> 2 Bulstr. 281, 282; Cumber. 64; Carth. 178; Skinner, 211, 297; 3 Wilson, 27; Cr. Jac. 459. <sup>b</sup> Moor, 159.

<sup>c</sup> Moor, 27, 399; Cro. El. 457, 552, 553; 1 Rol. 521, 522; Postea, 24; 1 Sand. 239; Cr. Jac. 125; Cr. Car. 222, 523; 1 Jones, 245; 1 Siderf. 157; 1 Anders. 82; 1 Show. 284; 4 Mod. 80; 3 Lev. 326; Salk, 185, 317.

demise made, it cannot be appurtenant or annexed to the thing which hath no being: as if the lessee covenants to repair the houses demised to him during the term, that is parcel of the contract and extends to the support of the thing demised, and therefore is *quodam modo* annexed appurtenant to houses and shall bind the assignee, although he be not bound expressly by the covenant; but in the case at bar the covenant concerns a thing which was not in esse at the time of the demise made,<sup>4</sup> but to be newly built after, and therefore shall bind the covenantor, his executors, or administrators, and not the assignee, for the law will not annex the covenant to a thing which hath no being.

2. It was resolved, that in this case, if the lessee had covenanted for him and his assigns, that they would make a new wall upon some part of the thing demised, that for as much as it is to be done upon the land demised that it should bind the assignee; for although the covenant doth extend to a thing to be newly made, yet it is to be made upon the thing demised, and the assignee is to take the benefit of it, and therefore shall bind the assignee by express words. So on the other side, if a warranty be made to one, his heirs and assigns, by express words, the assignee shall take benefit of it, and shall have a *Warrantia Chartæ*.<sup>1</sup> F. N. B. 135, and 9 E.; 2 *Garr. de Charters*, 30, 36, E.; 3 *Garr.* 1, 4 H., 8, Dyer, 1. But although the covenant be for him and his assigns, yet if the thing to be done be merely collateral to the land, and doth not touch or concern the thing demised in any sort, there the assignee shall not be charged. As if the lessee covenants for him and his assigns to build a house upon the land of the lessor which is no parcel of the demise, or to pay any collateral sum to the lessor or to a stranger, it shall not bind the assignee, because it is merely collateral and in no manner touches or concerns the thing that was demised or that is assigned over; and therefore, in such case, the assignee of the thing demised cannot be charged with it, no more than any other stranger.

3. It was resolved, if a man leases sheep or other stock of cattle, or any other personal goods for any time, and the lessee covenants for him and his assigns at the end of the time to deliver the like cattle or goods as good as the things were, or such price for them, and the lessee assigns the sheep over, this covenant shall not bind the assignee, for it is but a personal contract, and wants such privacy<sup>a</sup> as is between the lessor and lessee and his assigns, of the land in respect of the reversion. But in the case of a lease of personal goods there is not any privacy nor any reversion,<sup>1</sup> but merely a thing in action in the personality, but cannot

bind any but the covenantor,<sup>1</sup> his executors or administrators who represent him. The same law, if a man demises a house and land for years, with a stock or sum of money rendering rent, and the lessee covenants for him, his executors, administrators, and assigns, to deliver the stock or sum of money at the end of the term, yet the assignee shall not be charged with this covenant; for although the rent reserved was increased in respect of the stock or sum, yet the rent did not issue out of the stock or sum,<sup>2</sup> but out of the land only; and therefore, as to the stock or sum the covenant is personal, and shall bind the covenantor, his executors and administrators, and not his assignee; and it is not certain that the stock or sum will come to the assignees' hands, for it may be wasted or otherwise consumed or destroyed by the lessee, and therefore the law cannot determine at the time of the lease made that such covenant shall bind the assignee.

4. It was resolved that if a man makes a feoffment by this word *dedi*,<sup>1</sup> which implies a warranty, the assignee of the feoffee shall not vouch; but if a man makes a lease for years by this word *concessi*,<sup>2</sup> or *demisi*, which implies a covenant, if the assignee of the lessee be evicted, he shall have a writ of covenant; for the lessee and his assignee hath the yearly profits of the land which shall grow by his labour and industry for an annual rent, and therefore, it is reasonable when he hath applied his labour and employed his cost upon the land, and be evicted, (whereby he loses all,) that he shall take such benefit of the demise and grant, as the first lessee might, and the lessor hath no other prejudice than what his especial contract with the first lessee hath bound him to.

5. Tenant by the curtesy, or any other who comes in in the post shall not vouch, (which is in lieu of an action); but if a ward be granted by deed to a woman who takes husband and the husband dies, the husband shall vouch by force of this word *grant*, although he comes to it by act in law. So if a man demises or grants land to a woman for years, and the lessor covenants with the lessee to repair the houses during the term, the woman marries and dies, the husband shall have an action of covenant as well on the covenant in law on these words, (demise or grant,) as on the express covenant. The same law is of tenant by Statute Merchant, or Statute Staple, or *Elegit* of a term, and he to whom a lease for years is sold by force of any execution shall have an action of covenant in such case as a thing annexed to the land, although they come to the

<sup>1</sup> Swinb. 324.

<sup>a</sup> Kelw. 153, b.; 1 And. 4; Dyer, 56, pl. 15, 16, 212, pl. 37, 257, 38, 21, E. 429, a.; 3 Bulst. 291; 9 E. 4, 1, b.

<sup>1</sup> 2 Inf. 275; 4 Co. 81 a., 1 Co. 2 b. Co.; Litt. 384 a.; Yelv. 139; Perk. Sect. 124.

<sup>2</sup> 4 Co. 81, a.; Yelv. 139; Co. Lit. 384, a.; Perk. Sect. 124; Dall. 161; Cr. Jac. 72; 2 Inst. 276, F. N. B. 134, h.; Hob. 12; 1 Vent. 44; 1 Rol. 521.

<sup>2</sup> 2 Rol. 743.

<sup>4</sup> Cr. El. 457; Cro. Car. 439; Dy. 14, pl. 69; 1 Anders. 82; Moor, 159.

<sup>1</sup> Cr. Car. 25, 188; 1 Jones, 223; 1 Rol. Rep. 360; Moor, 159, 399.

<sup>a</sup> F. N. B. 135, d.; 60 Lit. 384, b.

<sup>1</sup> 2 Jones, 152; 1 Leon. 43; Swinb. 324.

<sup>2</sup> Cr. Car. 188. <sup>1</sup> 1 Leon. 43.

term by act in law; as if a man grants to lessee for years that he shall have so many estovers<sup>o</sup> as will serve to repair his house or as he shall burn in his house, or the like, during the term, it is as appurtenant to the land, and shall go with it as a thing appurtenant, into whose hands soever it shall come.

6. If lessee for years covenants to repair the houses during the term,<sup>p</sup> it shall bind all others as a thing which is appurtenant and goeth with the land in whose hands soever the term shall come, as well as those who come to it by act in law as by the act of the party, for all is one, having regard to the lessor. And if the law should not be such, great prejudice might accrue to him; and reason requires that they who shall benefit of such covenant when the lessor makes it with the lessee should on the other side be bound by the like covenants when the lessee makes it with the lessor.

7. It was resolved that the assignee<sup>q</sup> of the assignee should have an action of covenant. So of the executors of the assignee; so of the assignees of the executors or administrators of every assignee, for all are comprised within this word (*assignees*), for the same right which was in the testator shall go to his executors or administrators, as if a man makes a warranty to one, his heirs and assigns, the assignee<sup>r</sup> of the assignee shall vouch, and so shall the heirs of the assignee; the same law of the assignee of the heirs of the feoffee and of every assignee. So every one of them shall have a writ of *warrantia chartæ*. Vide 14 E. 3; Garr. 33; 38 E. 3, 21; 36 E. 3; Garr. 1; 13 E. 1; Garr. 93; 19 E. 2; Garr. 85, &c., for the same which was in the ancestor shall descend to the heir in such case, without express words of the heirs of the assignees.

Observe, reader, your old books, for they are the fountains out of which these resolutions issue, but perhaps by these differences the fountains themselves will be made more clear and profitable to those who will make use of them. For example<sup>s</sup> in 42 E. 3, 3, the case is:—Grandfather, father, and two sons, the grandfather was seised of the manor of D., whereof a chapel was parcel, a prior with the assent of his convent by deed, covenanted for him and his successors with the grandfather and his heirs, that he and his convent would sing all the week in his chapel, parcel of the said manor, for the lords of the said manor and his servants, &c.

The grandfather did enfeof one of the manor in fee, who gave it the younger son and his wife in tail; and it was adjudged, that the tenants in tail, as<sup>t</sup> *terretenants* (for the elder

brother was heir) should have an action of covenant against the prior, for the covenant is to do a thing which is annexed to the chapel, which is within the manor, and so annexed to the manor as it is there said. And Finchden related, that he had seen it adjudged, that<sup>u</sup> coparceners made partition of land, and one did covenant with the other to acquit him of suit which was due, and that coparcener to whom the covenant was made did alien, and the suit was arrear; and the feoffee brought a writ of covenant against the coparcener to acquit him of the suit; and the writ was maintainable notwithstanding he was a stranger to the covenant, because the acquittal fell upon the land; but if such covenant were made to say divine service in the chapel of another,<sup>v</sup> there the assignee shall not have an action of covenant, for the covenant in such case cannot be annexed to the chapel, because the chapel doth not belong to the covenantee, as it is adjudged in 2 H. 4, 6, b.<sup>w</sup>

But there it is agreed, that if the covenant had been with the lord of the manor of D., and his heirs lords of the manor of D. and the inhabitants therein, the covenant shall be annexed to the manor, and there the *terretenant* shall have the action without privy of blood. Vide 29 E. 3; 48 & 30 E. 3, 14. Simpkin Simeon's case,<sup>x</sup> where the case was, that the Lady Bardolf by deed granted a ward to a woman who married Simp. S., against whom the Queen brought a writ of right of ward, and they vouched the Lady Bardolf, and afterwards the wife died, by which the chattel real<sup>y</sup> survived to the husband, (and resolved, that the writ should not abate), the voucher appeared and said, what have you to bind me to warranty? The husband showed, how that the lady granted to his wife before marriage the said ward, the vouches demanded judgment for two causes.

1. Because no word of warranty was in the deed; as to that it was adjudged, that this word (*grant*)<sup>z</sup> in this case of grant of a ward (being a chattel real) did impart in itself a warranty.

2. Because the husband was not assignee to the wife nor privy. As to that it was adjudged that he should vouch for this warranty implied in this word (*grant*), is in case of a chattel real so annexed to the land, that the husband who comes to it by act in law and not as assignee, should take benefit of it. But it is resolved by *Wray*, Chief Justice, and the whole court, that the word (*concessi* or *demisi*) in case of freehold or inheritance<sup>a</sup> doth not import

<sup>o</sup> Post, 24 b., F. N. B. 181 n.

<sup>p</sup> *Ante*, 16, a. b.; *Post*, 24, b.; Cr. Jac. 240, 309, 439; Jones, 223; Cr. El. 373; 1 Sid. 157.

<sup>q</sup> 1 Roll. 521; 1 Roll. Rep. 81, 82; 2 Bulst. 281; Owen, 151, 152.

<sup>r</sup> Cr. El. 534; Co. Lit. 384, b.

<sup>s</sup> Co. Lit. 384, a.; 1 Roll. 520, 521; Br. Covenant, 5; Statham Covenant, 3.

<sup>t</sup> Co. Lit. 385, a.; 8 Co. 145, a.

<sup>u</sup> 1 Roll. 521; Co. Lit. 384, b., 385, a.; 42 E. 3, 3, b.; Br. Covenant, 5; 1 Roll. Rep. 81.

<sup>v</sup> 1 Roll. 521.

<sup>w</sup> Co. Lit. 385, a.; Fitz. Covenant, 13; Br. Covenant, 17; F. N. B. 181, a.

<sup>x</sup> Co. Lit. 384, a.; 2 Roll. 743, 744; 3 Bulst. 165; Hob. 47; 1 Roll. Rep. 81; Cro. Eliz. 436.

<sup>y</sup> 1 Roll. 345; Co. Lit. 381, a.

<sup>z</sup> Co. Lit. 384, a., 101, b.

<sup>a</sup> Co. Lit. 384, a.



any warranty. 11 H. c. 41, *acc vide*; 6 H. 4, 12; H. 4, 5, 1; H. 5, 2, 25; H. 8, Covenant Br. 32, 28; H. 8; Dyer, 28, 48; E. 3, 22; F. N. B. 145, c. 146 & 181; 9 Eliz.; Dyer, 257; 26 H. 8, 3; 5 H. 7, 18, 32; H. 6, 32, 22; H. 6, 51; 18 H. 3; Covenant, 30; Old N. B. Covenant, 46; H. 3, 4; 38 E. 3, 24. See the statute of 32 H. 8, c. 24, 34,<sup>b</sup> which act was resolved to extend to covenants which touch or concern the thing demised, and not to collateral covenants.

The following are the subsequent cases:—

If mortgagor and mortgagee make a lease in which the covenants for the rent and repairs are only with the mortgagor and his assigns, the assignee of the mortgagee cannot maintain an action for the breach of those covenants, because they are collateral to his grantor's interest in the land, and therefore do not run with it.

If tenant for a term of years lease for a less term and assign his reversion, and the assignee take a conveyance of the fee, by which his former reversionary interest is merged, the covenants incident to that reversionary interest are thereby extinguished. *Webb v. Russell*, 3 T. R. 402. July 1st, 1789.

A covenant in a lease that the lessee, his executors and administrators shall constantly reside upon the demised premises during the demise is binding on the assignee of the lessee, though he be not named. *Tatem v. Chaplin*, 2 H. Blackstone, 133. May 3rd, 1793.

There is no fraud in the assignee of a term assigning over his interest to whom he pleases, with a view to get rid of a lease, although such person neither takes actual possession nor receives the lease. *Vide Odell v. Wake*, 3 Camp. 394; *Copeland v. Stephens*, 1 B. & A. 593.

*Quare*. If the replication *per fraudem* by the lessor to a plea of assignment in such a case can ever be good? Certainly not, where the party assigning derives no benefit from the premises. *Taylor v. Shum*, 1 B. & P. 21. 11th May, 1797.

Copyhold lands mortgaged in fee by lease and release as freehold: the customary heir is bound by a covenant for further assurance; but during his infancy the court refused to foreclose, and would go no farther than directing the account, and that in default of payment the plaintiffs should be let into possession and hold and enjoy till the heir should attain 21, at which time he should surrender; and a day was given to show cause against the decree. *Spencer v. Boyes*, 4 Ves. 370. Dec. 11, and 21, 1793.

In a lease of ground, with liberty to make a watercourse and erect a mill the lessee cove-

nanted for himself, his executors, &c., and assigns, not to hire persons to work in the mill who were settled in other parishes with a pariah certificate: *Held*, that this covenant did not run with the land or bind the assignee of the lessee. *Mayor of Congleton v. Pattison*, 10 East, 136. July 1st, 1808.

A proviso in a lease for 21 years, that if either of the parties shall be desirous to determine it in 7 or 14 years, it shall be lawful for either of them, his executors or administrators so to do, upon twelve months notice to the other of them his heirs, executors, or administrators, extends, by reasonable intendment, to the devisee of the lessor who was entitled to the rent and reversion. *Roe v. Hayley*, 12 East, 464. June 27th, 1810.

A covenant to do all lawful and reasonable acts for further assurance includes the levying a fine, though not named.

So the satisfying judgments upon a covenant with A. and his heirs to do all lawful and reasonable acts for further assurance upon request, and a request made by the purchaser in his life to levy a fine and neglect so to do, the ancestor not being evicted in his lifetime, but the heir being evicted afterwards, the heir may maintain an action upon the request of the ancestor and refusal made to him, because the ultimate damage had not accrued in the lifetime of the ancestor. But the ancestor, if he had pleased, might also have sued. *Per Mansfield, C. J.*

*Semble*, That a request to levy a fine at the expense of the donee includes a virtual promise to pay the costs of a writ of *dedimus potestatem* for taking the acknowledgment at the donor's home, he not living in town. *King v. Jones*, 5 Taunt. 418. April 28th, 1814.

Devise to the use of H. J. for life without impeachment of waste, &c., remainder to the use of plaintiff for life, with power to make leases for two or three lives, &c., or for the term of 21 years, so as there be reserved the best rent without taking any sum or sums of money or other thing for or in lieu of a fine; and H. J., by indenture 15th October, leased for 14 years, to be computed, as to the meadow land from 13th Feb. last, the pasture from 25th March last, and the messuage from 12th May last, under a yearly rent payable to lessor and such other person as should be entitled to the freehold and inheritance half yearly, on 11th Nov. and 25th March, the first payment to be made on 11th Nov. next ensuing; and lessee covenanted with lessor, his heirs and assigns, for payment to lessor and such other person, &c., of the rent at the days and times, &c. *Held*, that the lease for 14 years was warranted by the power to lease for 21 years; and that the reservation of the first half year's rent, payable at the end of 27 days, was not taking a sum of money for a fine being in consideration of a preceding occupation; and that P. C. N., after the death of H. J., was an assignee within stat. 32, H. 8, c. 34, and might maintain covenant against the lessee for rent arrear after the death of H. J., and during the continuance of

<sup>b</sup> 32 H. 8, c. 34; Moor, 159; Cr. Jac. 523; 2 Bul. 281, 282, 283; 1 Sand. 238, 239; Cr. Car. 25, 222; 1 Anders. 82; 2 Jones, 152; Owen, 152; Stile, 316, 317; Co. Lit. 215, a.

the term. *Isherwood v. Oldknow*, 3 M. & S. 382, Jan. 23rd, 1815.

Where *J. B.*, being seised in fee, conveyed to defendant and *T. J.*, their heirs and assigns, to the use that *J. B.*, his heirs and assigns, might have and take to his use a rent certain to be issuing out of the premises, and subject to the said rent to the use of defendant, his heirs and assigns, and defendant covenanted with *J. B.*, his heirs and assigns, to pay to him, his heirs and assigns, the said rent, and to build within one year one or more messuages on the premises, for better securing the said rent, and *J. B.* within one year demised the said rent to plaintiffs for 1,000 years. *Held*, that covenant would not lie for the plaintiffs for nonpayment of the rent, or for not building the messuages, for the covenant was personal to *J. B.* *Milnes v. Branch*, 5 M. & S. 417. Nov. 15th, 1816.

Assignees of a bankrupt lessee, though by accepting the lease they discharge the bankrupt from any claim upon him for rent, may assign the lease to an insolvent person, to exonerate themselves from future claims for rent. *Onslow v. Corrie*, 2 Madd. 230. 8th & 18th Nov. 1817.

Covenant will lie by the assignee of the reversion of part of the demised premises against the lessee for not repairing. *Twynn v. Pickard*, jun. 2 B. & Ald. 105. Nov. 6, 1818.

Where *A.* being possessed of certain premises for a term of years, assigned part of them over to *B.* for the residue of his term, with a covenant for quiet enjoyment, and *B.* afterwards assigned them over to *C.* *Held*, that *C.* having been evicted by *J. S.*, the lessor of *A.*, previously to the assignment to *B.*, might maintain an action against *A.* upon the covenant for quiet enjoyment, on the ground that there was a priority of estate between *A.* and *C.* *Campbell v. Lewis*, 3 B. & A. 392. Feb. 4. 1820.

A covenant to insure against fire—premises situated within the weekly bills of mortality mentioned in 14 G. 3, c. 78, is a covenant that runs with the land. *Vernon v. Smith*, 5 B. & A. 1. Oct. 20, 1821.

*A.* being seised in fee of a mill and of certain lands, granted a lease of the latter for years, the lessee yielding and paying to the lessor, his heirs and assigns, certain rents, and doing certain suits and services; and also doing suit to the mill of the lessor, his heir and assigns, by grinding all such corn there as should grow upon the demised premises, and the lessor afterwards devised the mill and the reversion of the demised premises to the same person: *Held*, that the reversion of the suit to the mill was in the nature of a rent, and that the implied covenant to render it resulting from the reversion, was a covenant that ran with the land as long as the ownership of the mill and the demised premises belonged to the same person, and consequently, that the assignee of the lessor might take advantage of it. *Vyvan v. Arthur*, 1 B. & C. 415, H. T. 1823.

Where a lease of an undivided third part of certain mines contained a recital of an agree-

ment made by the lessee with the lessor, and the owners of the other two-thirds, for pulling down an old smelting mill, and building another of larger dimensions, and the lease contained a covenant to keep such new mill in repair, and so leave it at the expiration of the term, but did not contain a covenant to build it: *Held*, that such a covenant was to be implied, and that the lessor of the one-third might sue upon it in respect of his interest.

The lease contained a demise of all mines and minerals then opened or discovered, or which might during the term be opened or discovered, in or under certain moors and waste lands, and also all smelting mills then standing upon the said lands, with full liberty to sink shafts there, and to build thereon any mills or other buildings requisite for working the mines; *habendum*, the said demised premises with the appurtenances for 21 years. The lessor afterwards granted his reversion of and in the said demised premises with the appurtenances, to *G. B.*, who by will devised the same to the plaintiffs: *Held*, that the covenant to build the new smelting mill tended to the support and maintenance of the thing demised, and that the assignee of the reversion might therefore sue upon it. *Samson and another v. Easterby*, 9 B. & C. 505. May 26, 1829.

In an indenture of lease the lessee covenanted with the lessor, his heirs and assigns, to indemnify the overseers for the time being of the parish in which the premises demised were situate from all costs and charges by reason of the lessees taking an apprentice or servant who should thereby gain a settlement within, or become chargeable to the parish. *Held*, to be a valid covenant, although it was objected that it was unreasonable in restraint of trade and contrary to the policy of the poor laws. *Held*, also, that the action was well brought by the executors of the lessor, as the covenant was an express covenant with him personally, and did not run with the land. *Walsh v. Fussell*, 3 Moor & P. 457. July 8th, 1829.

A proviso in a lease, giving power of re-entry if the tenant make default in performance of any of the clauses by the space of 30 days after notice, does not apply to the breach of a covenant not to allow alterations in the premises, or permit new buildings to be made upon them without permission; and an under-tenant having erected a portico contrary to the covenant, and notice having been given to him to replace the premises in their former state which he neglected to do for 30 days: *Held*, that no forfeiture was incurred.

Premises being demised and underlet, the first tenant surrendered his lease and took a new one with similar covenants. The under-tenant continued in possession, and never surrendered. *Quære*, whether special covenants in the new lease, co-extensive with those in the old, (as not to erect new buildings without leave,) could be enforced by the head landlord against such under-tenant, as "duties reserved" by the second lease within 4 G. 2, c.

28, s. 6. *Doe d. Palk v. Marchetti*, 1 B. & Ad. 715. Jan 14th, 1831.

The Monmouthshire Canal Act provided that upon auxiliary railroads made by private individuals under the authority of the act, the tolls should not exceed the rate charged by the canal company, which for the articles of limestone and iron-stone was restricted to 2½d. a ton per mile; and it also empowered the canal company by agreement with the landowners, itself to construct auxiliary railroads on which tolls not exceeding 5d. a ton per mile might be charged. Certain landowners and owners of iron works, and among others, the lessee of the Beaufort works, formed a joint-stock company, and under the powers given by the act, constructed a railroad connecting a lime quarry, called the Trevil Quarry, with the several iron works and with the railroads of the canal company. In the partnership-deed of the railroad company, the lessees of the Beaufort works covenanted for themselves, their heirs, executors, administrators, and assigns, with the other shareholders, their executors, administrators, or assigns, so long as the covenantors, their executors, administrators, or assigns should occupy the Beaufort works, to procure all the limestone used in the said works from the Trevil Quarry, and to convey all such limestone, and also all the iron-stone from the mines to the said works along the Trevil Railroad, and to pay a toll of 5d. per ton per mile for the same.

Upon a bill filed by the shareholders of the railroad to enforce this covenant, against a person who had purchased the Beaufort works, with notice of the partnership-deed: *Held*, 1st, That the covenant did not run with the land so as to bind assignees at law; and that a court of equity would not, by holding the conscience of the purchaser to be affected by the notice, give the covenant a more extensive operation than the law allowed to it: 2ndly, That the covenant securing a toll of 5d. a ton per mile to the shareholders of the Trevil Railroad, was a fraud upon the canal company and the legislature, and therefore ought not to be specifically enforced by injunction. *Keppel v. Bailey*, 2 M. & K. 517. Jan. 18, 20, 21, 29, 1834.

The surrenderee of a copyhold is an assignee of a reversion within the statute of 32 H. 8. c. 34, and may maintain an action of covenant upon a lease made by his surrenderer, and the defendant in such action cannot protect himself by alleging the invalidity of the lease. *Whitton v. Peacock*, 3 M. & K. 325. March 17, and May 23, 1834.

The assignee of a lease is liable for breach of a covenant to repair, committed during his own possession, though he may have assigned the premises before the action was commenced. *Harley v. King*, 5 Tyr. 692, E. T. 1835.

T. M. demised premises to the defendant, subject to a covenant not to fell, stub up, lop, or top the timber trees, excepted out of the demise; a breach of this covenant having been committed in his lifetime: *Held*, that his exe-

cutor could maintain covenant against the lessor. *Raymond v. Fitch*, 5 Tyr. 985, T. T. 1835.

It was agreed between A. and E., (the lessees of the V. Theatre,) and the plaintiff, that in consideration of 313l. paid by the plaintiff to A. & E., they would pay to the plaintiff 360l. on the 31st Dec., 1834, if all of them and one B. F. should be living on any part of that day; that the plaintiff should till that day, if all of them, A. E., the plaintiff, and B. F. should so long live, or so long during the same period as all of them should live, have the free use of two private boxes in the V. Theatre; that if all of them, A. E., the plaintiff, and B. F., should be living on any part of the 31st Dec., 1834, the plaintiff should pay nothing for the use of the boxes; but, if either of them should die before that day, the plaintiff should make such compensation for the use of the two boxes during the time he should have been entitled thereto as should be just and reasonable. *Held*, that this was a mere personal covenant by A. and E. with the plaintiff, and therefore not binding, as to the use of the boxes, on an assignee of the theatre. *Flight v. Glossop*, 2 Scott, 220. June 9th, 1835.

A mortgagee, after default in payment by the mortgagor, has, if he thinks proper to exercise them, the same rights against a tenant by lease granted before the mortgage as the mortgagor had, and may take his remedy on such lease as assignee of the reversion. If the lease was made by the mortgagor subsequently to the mortgage, the mortgagee may treat the tenant as a trespasser, but cannot distrain or sue for rent, unless he has accepted rent from the tenant, or has given him notice to pay rent, and the tenant has acquiesced.

A deed to lead the uses of a recovery, after reciting that the premises were to be conveyed for the purpose, among others, of securing payment of 800l. advanced by J. H. to M. R. tenant in tail in remainder, declared the uses as follows:—To H. and L., their executors, &c., for 1000 years, to commence from the day before the date, &c., in trust, (subject to the powers, &c., after mentioned,) upon nonpayment of the 800l. and interest, to sell or mortgage, and pay that sum to J. H., and from and after the determination of that term and subject meantime thereto and to the trusts thereof, to E. R., mother of M. R., for life; remainder to T. L., his executors, &c., for 2000 years, to commence from the day of the decease of E. R., in trust to levy and repay such sum as E. R. should during her life pay to J. H. for interest on the 800l., and to suffer the person next in remainder or reversion expectant on the first term to receive the residue of rents not applied in executing the trust of the latter term: remainder, and in the meantime subject thereto, to such uses as M. R. should appoint, and in default of appointment, to him for life; remainder to his sons and to his daughters in tail; remainder over.

A power was then reserved to E. R. to demise the premises for ten years from the date

of the deed, or seven years from the day of her decease, reserving the best rent, &c. *E. R.* demised the premises to a tenant for seven years from the day of her decease, reserving rent to *M. R.* or the person for the time being entitled to the freehold or inheritance of the premises immediately expectant on the decease of *E. R.* She died and the lessee entered. *M. R.* died shortly afterwards, and left a daughter; afterwards the trustees of the terms of 1000 and 2000 years assigned them to *J. H.*, default having been made in the payment of his 800*l.*

*Held*, that the seven years lease granted by *E. R.* being made under a power created by the deed of uses, must be deemed contemporaneous with the term of 1000 years created by the same deed, and binding on the trustees of that term who were parties to the deed, so that they could not disturb the possession. That the trustees of that term, though not "entitled to the freehold or inheritance," were the reversioners entitled to the rent reserved by the lease, and consequently, that their assignee might distrain for it.

And this although an ejectment had been brought against the lessee on the demises, amongst others, of the last mentioned trustees, (laid previously to their assignment to *J. H.*), there having been no judgment nor any actual eviction of the lessee. *Rogers v. Humphrey*, 4 A. & E. 299. Nov. 23rd, 1835.

A lease of lands, &c., by *A.* to *B.* contained a general covenant by *B.* to repair, and a further covenant that *A.* might give notice to *B.* of all defects and want of repair, and if *B.* did not repair the said defects within two months, *A.* might enter and do the repairs himself, the expence of which *B.* was to repay at the time of paying his next rent, and if he did not do so, *A.* might distrain on him for the expence as in case of rent in arrear. There was also a power to *A.* to re-enter upon breach of any covenant. The premises being out of repair, *A.* gave *B.* notice to repair within six months, and that if *B.* did not repair within that time, he would perform the repairs and charge *B.* with the expence. The premises were not repaired within the six months. During that time a negotiation was entered into by *A.* and *B.* and after the expiration of the six months, *A.* gave *B.* notice, that if he did not agree to certain terms in three days, *A.* would hold him to the covenant in his lease; *B.* did not agree.

*Held*, that *A.* could not recover in judgment for a forfeiture, he having elected to perform the repairs, and distrain on *B.* for the expence, and the general power to re-enter not being revived by the three days' notice.

*Seemle*, that where a power of re-entry for breach of covenant is reserved in a lease, and the reversion descends to co-partners at common law, one alone cannot maintain ejectment for breach of the covenant. *Doe d. De Rutzen, v. Lewis*, 5 A. & E. 277. June 2, 1836.

Lands held under letters patent from the Duchy of Cornwall, for a term determinable on the death of three parties named therein, were leased for 66½ years if the *cestui que vie*

should so long live, with a covenant on the part of the lessor, his executors, &c. in case of the death of those parties during the term by the indenture granted, to "apply for, and do his and their utmost endeavours to procure a renewal or renewals of such letters patent for another life or lives, so as the lessees, their executors, &c. might hold and enjoy the premises for the whole term, subject only to the rents and covenants in the indenture mentioned, and without being compelled, or compellable, or liable to pay any part of the fine or fines that should be paid on such renewal." Two of the lives having dropped, the grantee of the letters patent applied for a renewal. The Duchy demanded for such renewal a fine, which was found by a special verdict to have been a reasonable fine, if such fine ought to be calculated on the annual value of the premises taken at rack-rent, two and a half and three years' value: *Held*, that this was a proper mode of valuation, and the fine not unreasonable; and that the lessor, having declined to pay such fine, had failed to perform his covenant to do his utmost endeavours to procure a renewal of his letters patent.

*Held*, also, that the above was a covenant running with the land.

And that the fact of the plaintiff being assignee only of a part of the interest created by the lease, did not preclude him from suing for and recovering damages in respect of the breach of covenant. *Simpson v. Clayton*, 6 Scott, 469. June 13, 1838.

See also *Steward v. Wolveridge*, 9 Bing. 60, 2 Moo. & Sc. 75.; *Doe d. Calvert v. Reid*, 10 B. & C. 849; *Burnett v. Lynch*, 5 B. & C. 589; 8 D. & R. 368; *Jourdain v. Wilson*, 4 B. & Ald. 266; *Grey v. Cuthbertson*, 4 Doug. 351; 2 Chit. 482; *Holford v. Hatch*, 1 Doug. 183; *Milnes v. Branch*, 5 M. & S. 411; *Colleson v. Lettsom*, 6 Taunt. 224; 2 Marsh. 1; *Stokes v. Russell*, 3 T. R. 678.

## ANNUAL MEETING OF THE UNITED LAW CLERKS' SOCIETY.

THE 14th Anniversary Dinner of this society took place on Tuesday the 16th June, at the Crown and Anchor, Strand. The Hon. Mr. Baron Platt presided, and was supported by many eminent members of the profession.

Amongst the barristers we observed:—Mr. T. C. Anstey, Mr. Bovill, Mr. Carden, Mr. C. Clark, Mr. Fortescue, Mr. E. James, Mr. J. B. Kirby, Mr. Maynard, Mr. H. Merivale, Mr. Phipson, Mr. E. R. Seymour, Mr. R. C. Sewell, Mr. Steere, Mr. Wallinger, Mr. T. Webster, Mr. P. Wilmot, and Mr. Cancellor, one of the Masters of the Common Pleas.

The muster of solicitors was unusually strong. Amongst others were.—Mr. Bigg, (one of the trustees), Mr. J. Bird, Mr. Boys, Mr. M. Clayton, Mr. C. M. Collett, Mr. Collisson, Mr. Coverdale, Mr. G. Cox, Mr. W. Dimes, Mr. A. Dobie, Mr. Few, Mr. L. Freeman, Mr. Gedye, Mr. M. H. Gregory, Mr. T. Harvey, Mr.

Hepburn, Mr. Husband, Mr. B. W. Hutchinson, Mr. J. O. Jones, Mr. Lucena, Mr. M'Leod, Mr. Maugham, Mr. Watson, Mr. J. Philpot, Mr. H. F. Richardson, Mr. J. Rose, Mr. Scadding, Mr. Sweeting, Mr. E. Walmisley, Mr. J. W. Walsh, Mr. Warneford, Mr. Wathen, Mr. J. Watson, Mr. W. H. Watson, Mr. Westmacott, Mr. Westwood, and Mr. J. P. Wingfield.

The usual loyal toasts were introduced by the learned *Baron*, with emphatic and appropriate addresses. In proposing the health of Prince Albert, the chairman stated, that he had looked at the report to see if his royal highness was amongst the society's patrons, knowing that his aid was never withheld where wanted. He did not find the prince's name there, but as he was now a bencher of Lincoln's Inn, he must be numbered amongst the patrons of the institution. The learned baron mentioned two instances of the prince's great liberality to a kindred society, and he doubted not he would become a patron of the law clerks. His professional sympathies would be excited on being informed of the praiseworthy objects of this society, and he would, no doubt, give it his countenance, if application were made to him through the proper channel.

The report of the society was then read by the secretary.\*

In proposing "Prosperity to the United Law Clerks Society," the learned *Baron* stated that the position of a law clerk was one of great trust: on his integrity and strict attention to business much depended not only of the interests of the profession, but of the public at large. His faithfulness must be known to every one then present. Considering the great trust reposed in him, how seldom it was that the confidence was betrayed. He rejoiced to see that the bench, the bar, and the solicitors came to the support of such a society, formed for the assistance of their clerks when overtaken by sickness, old age, or death. There was quite enough wealth in the profession to do all necessary good. The learned baron kindly mentioned his own clerk who had served him between 30 and 40 years, and he was bound to say that he had always found that clerk a faithful friend. The fund of the society during the last year, it appeared, had heavier calls upon it than it had ever before experienced, yet the liberality of the profession had enabled it to satisfy every claim, and to invest a larger surplus than before. The learned judge stated he would assist the society to the best of his ability, and he trusted all present would do the same.

Mr. *Phipson* ably returned thanks on behalf of the society.

Master *Cancellor* proposed the health of the Lord Chancellor, Lord Cottenham, and the other patrons of the society. He was much pleased at the support afforded by the profession, which had enlarged the society's means of doing good. He was certain the members

were grateful for that support. He agreed with the learned baron in his statement of the very faithful way in which law clerks generally discharged their duties. In his office he had an opportunity of seeing this. He found them zealous and generally very discreet. Sometimes, indeed, the latter quality might be overbalanced by the former, but this arose from a good motive—an earnest desire to serve well their employers.

Mr. *Fortescue* returned thanks in an able address, stating that the support of the profession was given most willingly. He observed upon the fact that one or two of the Inns of Court had not become patrons, but he doubted not they would ultimately assist the good cause in which they were engaged.

"The Bench, the Bar, and the Profession" was proposed by Mr. *A. Dobie*, who made several able remarks on the respective duties of the several branches of the profession.

Mr. *Edwin James* returned thanks in a very eloquent address. He observed upon the distinguished reputation held by the profession in this country. In speaking of the high character of its judges, he observed that it was not sufficient that the law should be feared, it must also be loved. Severity alone would not prevent offence. The learned baron in administering the law never forgot that mercy must be the handmaiden of justice. The bench added lustre to its bright character by lending its influence in promoting the interest of societies like the present. The learned gentleman stated, that in returning thanks for the bar, he could not forget that within those walls meetings were annually held to commemorate the exertions of Lord Erskine, the greatest advocate of English law.

"The Health of the Honorary Stewards" was proposed by Mr. *James Husband*, and responded to by Mr. *E. S. Westmacott*.

Mr. *Steele* proposed "The Health of the Trustees," and made several appropriate remarks on the usefulness of the society.

Mr. *E. S. Bigg*, one of the trustees, in returning thanks, stated that at the foundation of this society it was thought it had undertaken more than it could accomplish; but he, with others, thought differently. Support came slowly at first, but at last their early expectations were fully realized, and it was found that instead of being wrong they were quite right. The society was not thwarted by little obstacles, but knowing that perseverance will accomplish all things in a good cause, the society had persevered, and prosperity had been the reward. The exertions of the learned judge and his brethren had contributed not a little to that prosperity. It had placed an increased burthen on the shoulders of himself and his co-trustee Mr. *Fosse*, but they did not object to it, indeed they hoped that the exertions of the members would be so successful that their trustees would have to stagger under the weight of the load they imposed upon them.

Mr. *W. Bovill* proposed the health of the chairman, and adverted to the happy allusion

\* This report will be found at p. 273, post.

made by Mr. Baron Alderson, last year, who in appointing the present chairman, his executor, to preside for him on this occasion, stated that he would no doubt be able to render a good account. This had been fully verified by the donations announced, which amounted to 487*l*.

The learned *Baron* returned thanks, stating, that until his visit last year he was not aware of the objects of the society. The result of that visit had been to wed him to the institution. His learned brother Alderson expressed a hope, that as his executor he would take out probate. He agreed to do so, and was anxious that his accounts should prove satisfactory. The members of the profession around him had assembled of their own free accord. They had assembled to promote and extend the objects of the society. He thought the result of the meeting would be satisfactory to the patrons and members. The accounts were even more satisfactory than last year. He was happy to say, that he had applied to his brother Erle, who had consented to preside at the next anniversary.

The donations ultimately exceeded 500*l*.

#### THE SOCIETY'S FOURTEENTH ANNUAL REPORT.

It has hitherto been the pleasing duty of the committee to report favourably of the progress of the society, and they are happy to state, that the year just past has not been less prosperous than any which has preceded it. The claims made since the last anniversary have been numerous, and in meeting them, a much larger sum than usual has been required, yet every demand has been fully satisfied, and a larger addition made to the capital of the principal fund than in any preceding year.

The chief expenditure of the society arises from the pecuniary assistance which it affords (out of the general fund) to its members in sickness, superannuation, and death. The number of claimants on the first account has been eighteen. Though this number is much less than the year preceding, a larger proportion than usual were cases of long-continued illness, whereby the expenditure has considerably exceeded that of the year before. The amount expended has been 228*l*. 16*s*. 6*d*., which added to the disbursements of previous years, makes the total sum thus expended 1,217*l*. 17*s*.

It is with regret that the committee report, that since the last meeting two members have, by severe indisposition, been rendered incapable of following any employment, and are now receiving the allowance granted on superannuation.

In one case the member has been incapacitated by long-continued nervous disease; in the other, by insanity; each of them is now in receipt of a weekly payment, amounting yearly to 31*l*. 4*s*. In almost all similar institutions, the right to receive this allowance is dependent on the age of the member, and rarely commences before sixty. The elder of these mem-

bers is only forty, the other not yet thirty-two. The patronage of the profession has enabled the society to grant this allowance irrespective of age, only requiring ample medical evidence that the member is permanently disabled from earning the means of livelihood. An allowance of this nature and amount, commencing at the customary period, is a great advantage, but the condition of these two afflicted members would be little improved by the assurance, that twenty or thirty years hence they would be in the receipt of sufficient pecuniary assistance to place them beyond the reach of absolute dependence, provided they so long paid their subscriptions.

The last branch of the society's expenditure out of the general fund, consists of a payment of 50*l*. made to the family of each member on his death, and of a payment of half that sum to each married member on the death of his wife.

The committee report with regret, that of the cases of sickness already referred to five terminated fatally. One other case has also occurred, and the families of these six members have received altogether a sum of 300*l*.; three cases of death have occurred amongst the members' wives, and a sum of 75*l*. has been expended in meeting the claims that have thus arisen. The sum disbursed by the society on these accounts (alone) amounts to 1,662*l*. 10*s*.

The claims upon the casual fund, which is appropriated to the assistance of distressed clerks belonging to all branches of the law, and to their widows who may be in distress, have been less numerous during the last year. All such clerks are eligible, whether members or not. The only qualifications required are, that the applicants shall truly need the assistance, and also be deserving of it. This fund is also employed in assisting with small loans members who may suffer from temporary pecuniary embarrassment. The committee have received thirty-six applications for relief, of which twenty three, after careful inquiry, were found to be proper cases for assistance, and the applicants received such relief as the society was enabled to afford: with one exception, not one of these persons had ever contributed to the funds of the society. Many members have also been accommodated with small loans to meet pressing and unavoidable emergencies. In granting these loans, (which are repayable without interest or charge of any kind,) all due care is exercised, and generally they have been punctually repaid. In these gifts and loans a sum of 368*l*. 10*s*. has been expended. The total payments thus made now amount to 1,833*l*. 19*s*.

The committee are fully aware that the demands, which are gradually increasing every year, will before long render any considerable saving impracticable; and they have therefore sought by all proper means to increase the capital of that fund which is charged with the payment of the greater benefits. The general fund in April, 1845, amounted to 7,423*l*. 4*s*. 8*d*. During the year the sum of 1,831*l*. 8*s*. 1*d*. has been received, and 673*l*. 13*s*. 9*d*. expended.

The surplus, 1,157*l.* 1*s.* 1*d.*, has been added to the invested capital, which on the 20th of May last amounted to 8,564*l.* 3*s.* 7*d.* It must be remembered that the liabilities of this fund are very heavy. Each of the two members now on the superannuation fund requires the interest of a sum of 1,000*l.* in the payment of his allowance alone, and there are now 455 members.

The small amount of the casual fund prevents the investment of any part of it. In April, 1845, this fund amounted to 66*l.* 2*s.* 4*d.*, which has been increased during the year by the donations of the profession, the subscriptions of the members, and receipts from incidental sources, to 488*l.* 5*s.* 6*d.* In gifts, loans, and necessary disbursements, a sum of 368*l.* 17*s.* 9*d.* has been spent. The balance of cash in hand of this fund amounted at the last audit to 142*l.* 18*s.* 3*d.*

The contributions of the members alone to both funds have during the year amounted to 1,050*l.* 17*s.*

The committee trust that this general statement of the operations of the society will prove satisfactory to the patrons and members. Every just claim has been liquidated. No deserving applicant for assistance from the casual fund has been sent away unrelieved; and notwithstanding a year of more than ordinary pressure has occurred, a considerable sum has been added to the invested capital. To the kind support afforded by the profession is mainly attributable the present favourable state of the society's affairs and its ability to meet all claims in a spirit of liberality. Without a continuance of that patronage its efficiency and benevolence would be greatly diminished. The welfare of the members has now become identified with that of the institution, and the committee hope that it will not fail to receive a renewal of that support which has so essentially contributed to its usefulness and present flourishing condition.

## THE LAW STUDENT.

### No. 5.

#### LEGAL EDUCATION.

OUR readers are aware that the select committee of the House of Commons on Legal Education has for some time been proceeding with their inquiries. The committee usually meets every Tuesday and Thursday. Many witnesses have been already examined: benchers of the inns of court; members of the bar both in England and Ireland, the official authorities of several law societies, and other practitioners. We shall look forward with some interest to the "Blue Folio Book," which will, we presume, make its appearance this vacation.

#### PROPOSED ARTICLED CLERKS' SOCIETY.

We some time ago received a communication from the proposers of an Articled Clerks' Society, and take this opportunity of making some extracts from the letters addressed by them to the Lord Chancellor, and Master of the Rolls.

#### They state

"That nothing tends so much to secure the honour, respectability, and efficiency of our profession as carefully watching the education of its rising members. It was to promote this (as your lordships are well aware) that the examination preparatory to the admission of attorneys and solicitors was established, a measure which, in our humble opinion, has already been of great advantage, and which bids fair for much greater hereafter. Your lordships' attention may not have been called to the fact, that there is no institution existing, either in the metropolis or elsewhere, receiving the general support of the profession, calculated to assist the articled clerk in his studies or to aid him in his preparation for the examination," and that consequently the clerk at the commencement of his articles (for want of that advice and assistance which such an institution might afford) has to struggle with so many difficulties that he too frequently abandons himself to despair of ever acquiring a sound and comprehensive knowledge of his profession, and aims solely at getting up sufficient knowledge to enable him to pass—knowledge acquired merely for the occasion, and which, not being engrafted firmly in his mind, and made, as it were, a part of himself, is more speedily lost than attained; or, as is frequently the case, he fails, not owing so much to his want of inclination or ability, as of that assistance and stimulus which the generality of youth so much require. We would also request your lordships' attention to the fact, that although amongst articled clerks are to be found youths at least equal in ability to those of any other profession, and although their number is so great, yet few ever attain to eminence or distinction in their profession,—caused, as we would humbly submit to your lordships, by the absence of an institution such as we now propose. Another consequence is, that the profession and the public are much exposed to the malpractices of artful and designing men, who, having but a superficial acquaintance with the law, make it an instrument of oppression. Thus the public are injured and the profession disgraced. The remedy, we humbly suggest, is to be found in the establishment of an institution which will raise the qualified practitioners above the attacks of these individuals, and draw so wide a line of demarcation in respect to character and competency between the two classes, that none in intrusting the care of their fortunes and interests need ever err.

"We have viewed with great interest the late proceedings of the benchers of the Middle Temple on behalf of candidates for the bar,

\* This appears to be a mistake, for so long ago as the year 1833, lectures were established at the Law Institution, expressly for articled clerks, and they are also admitted to the library and have a room appropriated for discussion.  
—Ed.

and we humbly think that the time is now arrived when the articulated clerks should put forth their claims to the consideration and assistance of the attorneys, and other members of the legal profession, upon the subject of education. The present appears, for this reason, to be a very happy crisis, and if we delay urging this subject now, we shall suffer such an opportunity to pass unimproved as may not occur again for many years.

"The character of the society will not, of course, be collegiate, but institutional. It is intended to be a valuable auxiliary to the office or chambers; and whilst at the institution the theory and principles of the law are principally learned, the practice at the office or chambers will be rendered more interesting and instructive. It is hoped that theory and practice will be thus happily combined; and that whilst the institution may be as a study, the practice at the office may bear the same relation to the lawyer as the experiments of the laboratory to the chemist.

"We have not at present entered minutely into the detail of our scheme, further than was necessary to satisfy ourselves and to convince your lordships of its importance and practicability; and we have thought that, as so much would depend upon the sanction of your lordships to the principle of the measure, it would be better to apply for that in the first instance. Your lordships will already have collected the general character of the proposed institution; but we would more particularly state, that the specific objects which we have at present contemplated are,—the formation of an institution where suitable lectures would be delivered; the formation of a library—and we would here state to your lordships that there is not a public law library in London accessible to the general body of articulated clerks; also the formation of classes, under competent tutors and professors, for private instruction; the institution of periodical examinations, and the award of prizes, honours, and distinctions, to those who most distinguish themselves."

The Lord Chancellor (Lyndhurst) by his secretary, acknowledged the receipt of the letter, and stated with reference to the scheme proposed in it, that the Lord Chancellor's engagements prevented his entering into the details of the scheme, or offering any suggestions respecting them; but that, so far as he has had time to examine it, there did not appear any objection to the plan proposed for increasing the professional knowledge of the members of the intended society.

The Master of the Rolls through his secretary replied, that his lordship was satisfied that much might be done to encourage and promote the instruction and education of articulated clerks, and it would give him very great satisfaction to hear of a well-considered and practicable plan being established for that purpose; but he thought that such a plan could not be formed and carried into execution without the advice and assistance of experienced at-

torneys and solicitors, who might be able to direct attention to the most advantageous course of study, and concur in the application of the time which may be required for pursuing it.

Nothing can be more considerate or judicious than this advice, and we trust the promoters of the measure will avail themselves of it.

## PRE-AUDIENCE OF THE BAR AT QUARTER SESSIONS.

### *The Queen v. The Justices of Denbighshire.*

AN important question was argued and determined in last Trinity Term, in the Court of Queen's Bench, of which we have received the following report—

The Solicitor General, Sir F. Kelly, moved for a rule to show cause why a *certiorari* should not issue to the justices of Denbighshire, to bring up an order made by them in January last, confirming an order made on the 6th of July, 1845, whereby it was directed that, in the court of quarter sessions for that county, *attorneys should not have audience, if there were four barristers present.*

The question intended to be raised, was whether the magistrates had a right to exclude attorneys from audience. It was submitted that they had not. Up to the time of the passing of the 11 Geo. 4, and 1 Will. 4, c. 70, by which the Welsh judicature was abolished, attorneys had been heard exclusively at these sessions, except when on some particular occasion barristers had been taken there on what was known as a special retainer. This course of proceeding continued till July of last year, when some barrister having before attended the sessions, the magistrates made the order in question. It was admitted with respect to magistrates exercising a summary jurisdiction, that they had complete authority in matters of practice in their own courts. The case of *Collier v. Hicks*, 2 B. & Ald. 663, was an authority for that proposition, but even there the court had referred to the want of the regular attendance of barristers at distant places, and the pressure of expense, which parties might, in some instances, be unable to bear. That last observation was one of peculiar force in these small courts, and in consideration of that, it might well be submitted that this exclusion of attorneys from acting as advocates ought not to be sanctioned.

Lord Denman. It appears to me that the rule is most important that all courts of justice have full power to regulate their own practice. The exception to that rule arising from occasions of convenience, as stated by Lord Tenterden, does not appear to me to apply to this case, or cases like this. The argument in favour of permitting attorneys to be heard because of the smaller expense would apply here, as well as in other courts, and would apply not only in favour of them, but in favour also of those who would attend for still smaller



charges than attorneys. Such an argument would be equally good in all cases whatever. We sit here to try causes which are often of very small amount, but that itself is no reason why attorneys or persons who would accept even a still smaller remuneration should be entitled to audience as counsel. In my opinion, it is necessary for the interest of all that there should be orders, and privileged orders, in courts of justice. In saying this, it is not necessary in any degree to interfere with the discretion of each court in the exercise of its undoubted power of regulating its own practice. That discretion has been exercised here under some limitation. That limitation is, that without there is a sufficient provision of barristers present, the attorney shall be heard. If, instead of the limit being four, the justices had said sixty, the reason now relied on, that of expense, would have been equally good, for the poor man would have found equal difficulty in employing one barrister out of the larger as one out of the lesser number. I think that that reason is not sufficient to satisfy us that the order should be quashed, and I am therefore of opinion that the rule ought to be refused.

Mr. Justice Patteson concurred.

#### ORDER CLOSING ACCOUNTANT-GENERAL'S OFFICE.

LORD CHANCELLOR.

Wednesday the 1st day of July, in the 10th year of the reign of her Majesty Queen Victoria, 1846.

*In the matter of the suitors of the High Court of Chancery.*

WHEREAS it is proper that the accounts kept by the Accountant General of this court should be examined and compared in order to settle the same. And whereas it will require considerable time to perfect such examination, and it is necessary that a time should be appointed for closing the books of accounts of the said Accountant General for the purposes aforesaid. His lordship doth order that the books of the said Accountant General be closed from and after Saturday the 15th day of August next to Thursday the 29th day of October next, in order to adjust the accounts of the suitors with the books kept at the bank; and that during that time no draft for any money or certificate for any effects under the care and direction of this court be signed or delivered out by the said Accountant General, or any stocks or annuities accepted or transferred by him relating to the suitors of this court; and that no purchase, sale, or transfer be made by the said Accountant General, unless the order, request, or registrar's certificate be left at his office on or before Friday the 7th day of August next; and that no order for the payment of any money out of court which may be then in court be received at the Accountant General's office after Monday the 10th day of August next. And to

the end that the suitors may have notice hereof, and apply to the court as there shall be occasion to have money paid to them out of the bank or stocks or annuities transferred to them before the said 15th day of August next, it is ordered that this order be affixed up in the several offices belonging to this court.

#### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

**Rolls Court.**

*Sourton v. Marriott.* May 22nd & June 30th, 1846.

#### READING DEPOSITIONS.

*An order to read in one cause the depositions taken in another cause between the same parties, is not irregular because obtained before the depositions are published in both causes.*

In this case there were two causes between the same parties, one the cause of *Flight v. Marriott*, before the Vice-Chancellor Wigram, the other the cause of *Sourton v. Marriott*, before the Vice-Chancellor Knight Bruce. Publication had passed on the 11th of May last, in the latter cause; in the former it was not to pass till the 21st of June. In this state of things a common order was obtained to use in the cause of *Sourton v. Marriott*, the depositions taken in the cause of *Flight v. Marriott*.

Mr. Kindersley and Mr. Cooke now moved to discharge this order for irregularity. They contended that the common order contemplated only the case of depositions having been published in both causes at the time it was made, and that the saving of just exceptions which it contains related only to the nature of the depositions, not to the time when they were taken. If such a practice as this were allowed, witnesses might be examined over again in the one cause as to matters to which they had previously deposed in the other.

Mr. Turner and Mr. Rogers for the order denied all intention on the part of *Flight*, who had obtained the order, to use any depositions taken after publication had passed in *Sourton v. Marriott*.

Lord Langdale, after making inquiry as to the practice, expressed his opinion that the order was not irregular, and therefore dismissed the motion with costs; at the same time stating that what he now did must not be considered as in any way interfering with the discretion of the judge before whom the cause was heard, to give such direction respecting the reading of the evidence or the costs of the present application as he might think proper.

#### Queen's Bench.

(Before the Four Judges.)

*Brown v. Dakin.* Sittings in Banc after Hilary Term.

#### PLEADING.—COMPOSITION.—AGREEMENT.

*The plea to a bill of exchange alleged an*

agreement on the part of the defendant with the plaintiff and divers other persons, that they would accept a composition. It appeared in evidence that there were two creditors to whom the agreement had never been communicated; and the learned judge was of opinion that the plea was not proved.

Held, on motion for a new trial, that the plea was not supported by the evidence, and that a plea setting out an agreement for a composition should *prima facie* show that all creditors agreed to the composition, except in cases where the plea specifies the particular creditors with whom the arrangement is made.

THIS was an action on a bill of exchange for 250*l.* The defendant pleaded, except as to 31*l.*, that the defendant being indebted to the plaintiff and divers other persons, and being in embarrassed circumstances, that the defendant offered and agreed to pay the plaintiff and such other persons, and the plaintiff and such other persons agreed to accept, a certain composition of 2*s.* 6*d.* in the pound, and that such composition was accepted by the plaintiff and such other creditors; and the 31*l.* were paid into court. The plaintiff replied, that the plaintiff and the other creditors did not agree in manner and form as in the said plea alleged. At the trial before Mr. Justice Wightman, it appeared that all the creditors agreed to take this composition except two to whom the agreement was not communicated. The learned judge was of opinion that the plea was not proved, the agreement for the composition being, according to the language of the plea, with the plaintiff and divers other persons, which must mean that the defendant agreed with all the creditors, and that therefore the evidence did not support the plea.

Mr. Humphrey moved for a rule to show cause why the verdict should not be set aside, or why a verdict should not be entered for the defendant, or why there should not be a new trial on the ground of misdirection. He contended that it was not necessary for all the creditors to agree to the composition; and that the plea, as between these parties, was substantially proved, although it appeared there were two to whom the agreement was not communicated. The plaintiff had agreed to accept 2*s.* 6*d.* in the pound, and give up the bill when that sum was paid him. Divers only means more than one. But at all events, it is a question for the jury, whether the agreement was substantially proved. *Wood v. Roberts*; *Good v. Cheeseman*.

*Cur. adv. vult.*

Lord Denman, C. J., delivered the judgment of the court. In this case the question submitted to the court was, whether the plea had been proved. To an action on a bill of exchange the defendant pleaded, that the defendant had agreed with the plaintiff and divers other persons to accept a composition of 2*s.* 6*d.* in the pound; but it appeared that no notice was given to two of the creditors, and they did

not agree, and in fact knew nothing of the arrangement. I do not think the plea is supported by the evidence. The plea would show *prima facie*, that all the creditors agreed. We say nothing as to the validity of a plea specifying the particular creditors with whom an agreement for a composition had been made.

Rule refused.

### Queen's Bench Practice Court.

*Simcox v. Bagnall.* Trinity Term, 1846.

SCIRE FACIAS.—AFFIDAVIT FOR LEAVE TO SIGN JUDGMENT ON RETURN OF NIHIL.

*The affidavit to found a motion for leave to sign judgment on a sci. fa. on the sheriff's return of nihil, must positively state that diligent attempts have been made to give the defendant notice of the proceedings: therefore, where an affidavit, after stating various futile attempts to discover the defendant's present residence, added that the deponent believed, that if the defendant had had actual notice of the proceedings, he would have removed his goods and chattels and absconded, so as to prevent the plaintiff from levying execution, the court refused the application.*

E. H. Woolrych applied for leave to sign judgment on a writ of *sci. fa.* on the sheriff's return of *nihil*. The affidavit, which was made by the plaintiff's attorney, stated the issuing and return of the writ, the entry of the rule to appear, that no appearance had been entered, and that eight days had expired since the return of the *sci. fa.* It then proceeded to state, "that the deponent was informed and verily believed that if the said defendant had had actual notice of the said proceedings, he would have removed and secreted, and disposed of his goods and chattels, and have absconded, so as to prevent the plaintiff from levying execution upon any judgment awarded upon the said proceeding in *scire facias*." The affidavit contained no direct statement of any attempt to give notice to the defendant of these proceedings, but it disclosed various facts, which, it was submitted, were sufficient to dispense with the necessity of such a statement. These facts were, that the action was brought to recover the sum of 8*l.* 15*s.*, for the rent of a house in the borough of Stafford, that the defendant, on the night of the 8th of May, 1844, clandestinely removed his goods under a false name from Stafford to Wolverhampton, and thence to London; that inquiries had been made of the police in Stafford and Wolverhampton, and that the defendant was traced up to a particular point, and was then lost sight of. The affidavit then added: "that the deponent hath since the time of the said judgment, used great exertions to find out the now residence of the said defendant, in order to cause him to be taken in execution under the process of this court, &c., but this deponent has been unable to discover and ascertain the same, or find the said defendant." [*Wightman, J.* You do not state any positive

attempts to give the defendant notice, and there is one statement in your affidavit which shows, that the plaintiff purposely omitted to give such notice for fear the defendant should abscond.] The affidavit contains abundant evidence, that any attempt to secure the defendant would have been useless. It distinctly states step by step, the efforts made to trace the defendant up to a particular point, and the fact, that every attempt to discover his present residence has proved abortive.

*Wightman, J.* This is quite a new practice; it must distinctly appear that everything has been done which circumstances permit, to apprise the defendant of the proceeding. The present affidavit rather points to the opposite conclusion. Let inquiry be made at the defendant's last known place of abode, and a copy of the *sci. fa.* be stuck up in the office, and you may then apply again.

Application refused.

#### Common Pleas.

*Ex parte Robert Bruce Fraser.* Trinity Term, 1846.

ARTICLED CLERK. — COMMENCEMENT OF SERVICE UNDER DISCRETION GIVEN BY 6 & 7 VICT. C. 73, s. 9.

*Where the attorney filing an affidavit under 6 and 7 Vict. c. 73, s. 8, had omitted to state therein that he had been duly admitted an attorney, as expressly required by that act. The court, after the lapse of six months, allowed a supplemental affidavit to that effect to be filed; and the service of the articulated clerk to be computed from the date of the articles, under the discretionary power given by the 9th section.*

*Talfourd, Serjeant*, on behalf of Mr. Fraser, an articulated clerk, moved for leave to file a supplemental affidavit with the proper officer, and that the period of his service might be completed from the day of the execution of the articles, under the provision of 6 & 7 Vict. c. 73, ss. 8, 9, giving the court a discretionary power. Mr. Fraser had been articulated on the 1st of May, 1845, and the attorney to whom he was so articulated had filed in due time, an affidavit complying in all respects with the act, except that it omitted to state that he had been duly admitted an attorney, as was expressly required by the act. The affidavit in support of the motion stated, that when the first affidavit was filed, the attorney was not aware of the terms of the act which had been lately passed, and that in the supplemental affidavit it would be sworn, that he was duly admitted an attorney in Trinity Term, 1842. The 19th section, which gave the court a discretionary power, enacted "that in case such affidavit be not filed within such six months, the same may be filed by the said officer after the expiration thereof, but the service of such clerk should be reckoned to commence and be computed from the day of filing such affidavit, unless one of the said courts of law or equity shall otherwise

order." Here the six months had elapsed, but it is submitted the court will think this a case in which the present application ought to be granted.

*Tindal, C. J.* We think it is a proper case in which to grant the application, and you may file your supplemental affidavit.

Application granted.

*Keane v. Watson and another.* Trinity Term, 1846.

DISCRETION IN EXAMINING ON INTERROGATORIES.—COSTS OF KEEPING WITNESS IN ENGLAND.

*The having obtained an order to examine on interrogatories, does not preclude a plaintiff from detaining the witness for a viva voce examination at the trial, and where the defendant has obtained an order to postpone the trial, and subsequently to stay all proceedings upon payment of the sum sought to be recovered and costs, he is bound to pay the expenses of the detention from the postponement up to the time of settling the action.*

*Byles, Serjeant*, had on a former day in this term obtained a rule calling upon the plaintiff to show cause why the Master should not review his taxation, and for a stay of proceedings in the meantime. From the affidavits on which he moved, it appeared that the action had been brought to recover the sum of 2,956l. 15s. for the breach of a charter party in not having shipped a cargo of guano. The cause stood for trial at the summer assizes in 1845, the action having been entered in the month of May previous. But an application having been made to Mr. Justice *Wightman* on behalf of the plaintiff to put off the trial in consequence of the absence of a material witness, an order was accordingly granted to postpone the trial until the next spring assizes, on payment into court of 1,600l. Before the latter assizes, however, the defendant obtained an order to stay all proceedings on payment of the money for which the action was brought and costs. Just after the order for postponement, the plaintiff had obtained another order for the examination of a witness named William Jones, on interrogatories; but, acting under the advice of counsel, this witness had been detained in England to give *viva voce* evidence at the trial. The expenses occasioned by the detention of this witness had been taxed at 97l. 14s. 2d., being at the rate of 7s. a day, less a sum which the witness had received for his attendance to give evidence in another cause. The affidavits further stated that during the postponement of the trial the witness had been employed in various ways by the plaintiff.

*Channell, Serjeant*, now showed cause. The case of *Lonegan v. The Royal Exchange Assurance*, 7 Bing. 725, was an authority to show that the plaintiff had a right to the cost of detaining the witness. So in the cases of *Mount v. Larkins*, 8 Bing. 195, and *Berry v. Pratt*, 1

B. & C. 276, it was held that a party was not bound to examine a witness on interrogatories if a *viâ voce* examination would be likely to prove more advantageous, and that the expenses were to be allowed. The case of *White v. Brazier*, 3 Dowl. 499, was also an authority on this subject. The plaintiff had filed an affidavit stating that the sum paid by him to the witness was 150*l.* 4*s.* 2*d.*, and that he had worked merely as a volunteer, and had not received any remuneration.

*Byles*, Serjeant, in support of the rule. The plaintiff having had an opportunity of examining the witness on interrogatories, ought not to be allowed to saddle the defendant with the costs of keeping him in England. Besides the allowance of 7*s.* a day is unreasonable. The case of *Loneyan v. The Royal Exchange Assurance* was not applicable here, for when it was decided, the examination of the witness could only have been through the medium of a bill in equity, and the same observation applies to *Mount v. Larkins*, and *Berry v. Pratt*. The case of *Temperley v. Scott*, 1 Moore & Scott, 601, contained some observations of Tindal, C. J., which bore on this case. In *White v. Brazier*, the principle now contended for was acted upon.

*By the Court.* Here is an action for a large sum of money which the defendant, after having obtained a postponement of the trial, pays, and it was a favour to the defendant to put off the trial. If this had been a wanton and unnecessary detention of the witness, it would have been different, but it appears from the act of the defendant, that it was necessary to secure the witness's attendance, and therefore the plaintiff was well warranted in keeping him in England. The party keeping a witness should be allowed some liberality in exercising a *bonâ fide* discretion as to whether it be necessary or not, and where the question is doubtful, it ought to be decided in favour of the party who detains, and here the party would have acted most unwisely if he had not kept the witness.

Rule discharged with costs.

#### Enchequer.

*Benin v. Jones.* Trinity Term, 6th June 1846.

#### ARREST OF MARRIED WOMAN.

*A married woman taken in execution on a ca. sa. in an action commenced against her before her marriage is not entitled to be discharged out of custody, although it appears that she has no separate property.*

THIS was an application to rescind an order of Rolfe, B., discharging the defendant, a married woman, out of the custody of the sheriff of Caermarthen. The writ of summons issued in March, 1846, and afterwards and before appearance, the defendant married her present husband. The action went on, and the plaintiff obtained judgment and issued a *ca. sa.*, upon which the defendant was taken into custody. Rolfe, B., having made an order for her discharge, on the ground that she had no separate property, the present rule was obtained, against which

Gray showed cause. Where a married woman is taken in execution in an action against her and her husband, the court will discharge her out of custody, if it appears that she has no separate property out of which the demand can be satisfied. 2 Tidd's Prac. 1026. *Sparkes v. Bell*, 8 B. & C. 1; *Houd and wife v. Matthews*, 2 Dow. P. C. 149. The same rule will apply to the case of a married woman sued alone. It is true that the marriage of the defendant did not abate the suit, but the husband may be made a party by *scire facias*. *King v. Jones*, 2 Ld. Raymond, 1525. There is no authority precisely in point. In *Chalk v. Deacon*, 6 Moore, 128, where the Court of Common Pleas refused to discharge a married woman taken in execution for a debt contracted before her marriage, the court considered it a matter in their discretion. In *Cooper v. Hunchin*, 4 East, 521, the application was made on the ground that the judgment was irregular. So in *Doyley v. White*, Cro. Jac. 323, the court only decided that there was no irregularity in the writ. In *Moses v. Richardson*, the defendant, who was married, was sued as a *feme sole*; and let judgment go by default. In *Evans v. Chester*, 2 M. & W. 847, the court refused the application, on the ground that it did not appear that the defendant had no separate property.

*F. Williams* in support of the rule. Until the case of *Chalk v. Deacon*, there is no decision that a married woman is entitled to be discharged out of custody. The practice is a stretch of the authority of the court which they will be slow to extend. The law gives a writ against a married woman, and it is difficult to see upon what principle the court interferes, unless it be this, that where the wife has no separate property it is mere idle tyranny to keep her in prison. In the present case it is by no means clear that the plaintiff has a remedy against the husband by *scire facias*, for if the only party who is liable is taken in execution, that fact might be pleaded to the *scire facias*. This case is distinguishable from that of a judgment against husband and wife, because the former could not be taken on this judgment. In *Evans v. Chester* the court did not decide the point.

#### Cur. adv. vult.

Pollock, C. B., delivered the judgment of the court. (After stating the facts, his lordship proceeded.) It is admitted that the defendant has no separate property, and the question is whether my brother Rolfe did right in ordering her to be discharged. The whole practice of discharging married women in lawful custody under an execution against the person is of recent date, and appears to rest on no principle whatever. Where a *ca. sa.* issues on a judgment, the sheriff is bound to take the party against whom the writ is directed, whether under coverture or not, and he is bound not only where she is sued with her husband, but also where she is sued alone, since the plaintiff has a right to recover the fruits of his execution, and take her in satisfac-

tion, and we cannot interfere to discharge her out of custody, unless there are some special circumstances authorising the court to do so in the exercise of its equitable jurisdiction. In modern times the courts have, in actions against husband and wife, been accustomed to discharge the wife when she has no separate property, and the reason for that is, that she cannot acquire property in satisfaction of the debt. As that practice has prevailed so long we should not feel warranted in overturning the established law, but in the case of a rightful judgment against a married woman alone there is no decided authority that the court will discharge her, if taken on a *ca. sa.* There is a distinction between that case and the case of a judgment against husband and wife. In the former the discharge of the wife deprives the plaintiff of all reasonable chance of obtaining satisfaction of the judgment; whereas, in the latter he may obtain it from the husband. It seems to me that we have no more right to deprive a plaintiff of part of his legal right than we have to deprive him of the whole of it, though the injustice in the one case is less than in the other; but the practice is well established that in the case of a joint execution the wife is entitled to be discharged, if she has no separate property. Seeing no principle to warrant us in discharging a married woman where she is sole defendant, we ought not by so doing to deprive the plaintiff of the fruits of his judgment; consequently, the rule must be discharged.

## NOTES OF THE WEEK.

### THE SOLICITOR GENERAL.

A fortnight ago we stated the names of the gentlemen, one of whom it was confidently predicted would be the Solicitor General. Last week "it was said" that Mr. Romilly would be promoted, but the rumour, it appears, was unfounded. The choice has fallen on *David Dundas*, of the northern circuit, Q. C., member for Sutherlandshire. He was called to the bar by the Hon. Society of the Inner Temple, on the 7th Feb. 1823. There seems to be an unusual unanimity in hailing this appointment as a highly proper one. The claims of the equity bar and the name of Romilly lead us to give a willing belief to the previous rumour; but the eminent qualities of Mr. Dundas, no doubt, entitle him to the distinction he has attained.

### LECTURESHIPS AT THE INCORPORATED LAW SOCIETY.

On the completion of the three year's course of lectures by Mr. Caley Shadwell and Mr. A. J. Stephens, new lecturers have been appointed; namely, Mr. *Jas. Wilde*, the nephew of the Chief Justice, in common law; and Mr. *Fielding Nalder*, in conveyancing. Mr. *S. Miller* enters his second year in the department of equity.

## PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

### House of Lords. NEW BILLS.

Recovery of Small Debts and Demands in England.—For 2nd reading.

Juvenile Offenders. In Committee. Marquis of Westminster.

General Registration of Deeds.—For 2nd reading. Lord Campbell.

Religious Opinions Relief.—Re-committed. Lord Lyndhurst.

Correction of Clerks (Church Discipline). In Committee. Bishop of London.

Punishment for deterring Prosecutors, Witnesses, &c.—In Committee. Lord Denman.

Corresponding Societies and Lectures.—For 3rd reading.

Game Laws. To be reported.

Small Debt Courts:

St. Austell. In Committee.

Birkenhead. In Committee.

### House of Commons.

#### NEW BILLS.

Real Property Conveyance.

Bankruptcy and Insolvency.—Re-committed. See the bill, 31 L. O. 569. Mr. Hawes.

Roman Catholics' Relief.—Re-committed. See the bill, p. 402, *ante*. Mr. Watson.

Northampton Small Debts Court.

Poor Removal.—Re-committed.

Death by Accidents Compensation. For 2nd reading.

Deodands Abolition. Mr. Bourverie.

Total Abolition of the Punishment of Death. Mr. Ewart.

County Rates. For 2nd reading.

Administration of Justice at Quarter Sessions.—In Committee. Mr. Prewen.

Charitable Trust Accounts.—In Committee. Mr. Hume.

Commons Enclosure, No. 2. In Committee.

Duty on books and Engravings. In Committee.

Amendment of Land Clauses Consolidation Act.

#### POSTPONED.

Highway Laws Amendment.

Somerset County Court.

## THE EDITOR'S LETTER BOX.

WE shall continue to give all the statutes which in any material respect bear on the law or practice of the courts, or are generally interesting to the profession.

Within the compass of our two volumes annually, comprising about six hundred pages each, our readers will find, we believe, everything that can be desired in a periodical work. Instead of detached volumes of Digests and Acts, the whole is now comprehended "within the four corners of our (enlarged) record."

We thank "F." No doubt our contemporary ought in common fairness to acknowledge the source of the articles which it copies.

# The Legal Observer.

SATURDAY, JULY 25, 1846.

—“Quod magis ad nos  
Pertinet, et noscire malum est, agitamus.”

HORAT.

## THE REMAINING LAW BILLS BEFORE PARLIAMENT.

It may be useful in this place to sum up the state of proceedings in Parliament relating to the Law Bills still remaining for consideration in one or other of the houses.

1st. We may enumerate the measures recently withdrawn or postponed till the next session. They are as follow:—

*The Highway Laws Amendment Bill*,—which was intended by Sir Robert Peel to afford some relief to the landed interest and to benefit considerably the public at large.

*The Somersetshire Local Court Bill*,—which was permitted very inconsistently to be brought in whilst the general measure of the late government was before parliament. The proposer of this project has reluctantly given it up.\*

The bill for the better *Administration of Justice at the Quarter Sessions* was not, we believe, supported by government, and remains over for the present.

The *Church Discipline Amendment Act* appears also to be deferred by the Bishop of London, who introduced it, in expectation that the government will do something of a satisfactory kind in another session.

*Land Clauses Consolidation Amendment.* This last bill limited the time for completing the subscribed capital and registering the shareholders. It also authorized a majority to dissolve the company.

2nd. The bills which the new Prime Mi-

nister signified it was the intention of government to press forward are the following:—

*The Small Debts Bill.* It was intended, however, that while the general design of this bill was approved, it was requisite that the New Law Officers should consider its details. The time which this duty will occupy,—considering the weight of the pressing political and financial subjects—may probably render it necessary to defer the measure to another session; but on this conjecture the parties interested must not rely, for (as on other occasions) the bill may be hurried through its various stages during the last week or two of the session.

*The Charitable Trusts Bill.* The former measure, negatived in the House of Lords, against the wishes of the late government, was undoubtedly much more objectionable than the present, which is limited to “procuring accounts of receipts and expenditure by all persons administering charitable trusts in England,” yet the new bill imposes the necessity of keeping the accounts in a new form and by a new officer; and in many important respects the same objections apply to this as to the rejected bill. Thus the trustees, committees, or other governing bodies of the vast number of charities throughout the country, who in a great degree support those charities by their own voluntary subscriptions, donations and bequests, will scarcely welcome the interference of a government officer, and submit to be driven in every instance to appoint persons for the purpose of keeping and rendering the accounts according to the arbitrary dictation of a government clerk. This will much endanger the amount of the liberal benefactions by which so large a class of charities have been prin-

\* In the House of Lords there are two bills still pending for establishing petty courts at *Birkenhead*, and *St. Austell*; and in the Commons a bill for a similar court at *Northampton*.

cipally, if not wholly maintained. It may not unnaturally be said—"If the state will interfere in the distribution of our funds, let the state provide them."

It should be recollected, that in all these charitable institutions, an account is always rendered at the annual or other meetings, and made public for the purpose of procuring new subscriptions. We apprehend, therefore, that for the sake of checking an occasional abuse, (which may be corrected by other means,) "a serious blow and great discouragement" will be inflicted upon the vast majority of our charitable institutions.

And the pretence for all this intermeddling is, that an inquiry into an abuse when conducted in the Court of Chancery, is too expensive. The proper remedy obviously is to improve the machinery of the court, and confer summary powers by way of petition in all trusts of small amount.

The *Removal of the Poor Bill*, as altered and intended to be carried by the new ministry, is confined to the following points:—1. Non-liability to be removed after five years residence. 2. Widows not removable for twelve months. 3. Nor children. 4. Nor sick persons. The obnoxious clause as to non-professional officers acting in legal business, has not been again introduced.

3rd. Of the bills not taken up by the government, we may first mention the *Bankruptcy and Insolvency Bill*, which still lingers in the Commons. Mr. Hawes being now in office may expedite it, but perhaps his avocations will deprive him of the leisure necessary to carry it successfully through parliament.

The *General Registration of Deeds Bill*, which Lord Campbell deferred till the Corn Law Bill should be settled, has not yet been read a second time; and we presume it must be considered by the Lord Chancellor as far too large and important a scheme to be entered upon at this late period of the session. Indeed, if the noble and learned proposer should be ever so well-minded to carry it through, there can be no chance of its passing both houses in the present session. Nevertheless, the profession should still continue their watchfulness over it.

The *Short-Form Real Property Conveyancing Bill* was wholly unnoticed by the Premier when he stated the intentions of the government with respect to the bills

then before parliament. Mr. Stuart, however, after adverting to the labour bestowed on this bill, which he said, showed the vast difficulty of dealing with any alteration of a law, denounced the bill as "a mass of absurdity that no honourable member would acknowledge the charge of it. Amendments of the law, he added, were easily proposed, but the difficulty was in enduing them with wisdom." In the present state of the parliamentary business, it seems unlikely that the bill should pass; but we will not answer for the result.

These are the principal measures remaining for consideration, and we append the list of the other bills, namely,

In the House of Lords:—

Punishment for deterring Prosecutions. In Committee.

Juvenile Offenders. In Committee.

Game Laws. To be reported.

In the Commons, the other bills are:—

Death by Accidents Compensation. In Committee.

Abolition of Deodands. For 2nd reading.

County Rates. For 2nd reading.

Commons Enclosure. To be reported.

## BURDENS ON REAL PROPERTY.

### LAW OF REAL PROPERTY.—CRIMINAL PROSECUTIONS.—STAMP DUTIES.

WE lately noticed the Report of the Special Committee of the House of Lords on the Burdens on Real Property, (see p. 137, *ante*.) It appears that another report was proposed to the committee by Lord Monteagle, but negatived. This paper has been printed by order of the House of Commons, and we deem it important to submit several parts of it to the consideration of our readers.

We apprehend that these various parliamentary inquiries will lead to the adoption of some serious changes in the practice of conveyancing, which our readers will do well to watch and consider. We hear, indeed, that in various parts of the country, the practitioners are taking into their consideration the bills now before parliament, relating as well to the forms of conveyances, settlements, mortgages, and leases, as to the establishment of a general registry. We have repeatedly called attention to these subjects, and trust that no further time will be lost.

Under the head of *Law of Real Property* we find the following suggestions:—



"The question being put to Mr. Blake, an English barrister, and one who has held high legal office in Ireland, 'What he considered to be the greatest burden to which landed property in Ireland is subject,' he answers, 'The cost of chancery and equity proceedings in general. I speak from some experience both in England and Ireland, having practised in the Court of Chancery in England some years, and having had equity duties to perform as Chief Remembrancer in Ireland.' Nor does this opinion appear confined to equity proceedings alone, nor yet to Ireland; it is applicable to all legal proceedings touching land. The evidence both of Mr. Stewart and Mr. Senior is worthy of attention. The expenses of searches, of making out title, and transferring legal property, is shown to be grievous, not only in its amount, but partial and unjust in its pressure on small proprietors. Being also uncertain, and incapable of any previous estimate, it involves every purchaser or seller in an undefined obligation. It also affects the credit of the landowner, by rendering the mortgage as well as the sale of land difficult and expensive.

"This affects the selling value of lands more especially as it excludes from the market the smaller, and therefore the more numerous purchasers. 'The great difficulty of our present law of property is, that small dealings in land are discouraged.' Such is the observation of Mr. Stewart. 'Our system much diminishes the value of land, and excludes all small purchasers, whose number more than make up for the mediocrity of their means.' This is the judgment of Mr. Senior. These burdens upon the free transfer of property therefore diminish the saleable value of land, and more particularly when sold in smaller portions.

Mr. Senior states, that the number of years' purchase in almost all the better parts of Europe is much higher than in England. He states that it is 35 years' purchase on the banks of the Rhine; and he attributes this important difference to the greater facilities of transfer which are given abroad. Nor is the diminished value of land the only or the greatest evil which results from this state of the law. A social evil of great magnitude is also the result of these impediments to the purchase of land by small proprietors. 'I think it would have a most beneficial effect upon labourers, and also a most important effect upon society at large, if the more industrious class of persons were enabled to acquire a property in their cottages and gardens. The satisfaction of living in his own house would be gratifying to his feelings, and would have a beneficial effect on his conduct. I think that instead of having, as I am afraid to a great extent we now have, a mass of the people possessing no sympathy with the ownership of property, it would give them a feeling of the sacredness of property, and the necessity of securing it.' These benefits, which the witness referred to (Mr. Heathcoat) describes with so much truth and feeling, are greatly abridged by the state of our laws, and

the expense and difficulty of making an assignment or conveyance of real property.

We think that the supposed difference in the price of landed property occasioned by the expense of proving the title and preparing the conveyance is far overrated, but the diminution of the stamp duty would be materially felt. As to a general registry it is stated that—

"All the legal witnesses examined, except one, consider that a registration of deeds is absolutely necessary, as the true foundation of a cheaper and more secure system of conveying and assuring the titles of landed property. "I believe that this is the only civilized country without a general register. In almost every country but this, the transfer of property is effected in the books of a notary or registrar.' The establishment of such a system was recommended by the Commission on Real Property, consisting of some of the most eminent conveyancers, and including the late Mr. Duval, Mr. Brodie, and Mr. Duckworth. It was also approved of by the late Mr. Charles Butler, the head of his profession. It has been recommended and sanctioned by high authorities in parliament, and has met with the concurrence both of committees and of the House of Lords. Unfortunately, the opposition of local and private interest has hitherto prevented the adoption of this wise and salutary measure; but it is to be hoped that a day is approaching when better influences may prevail.

"Apprehensions have been either excited or felt lest the registration of deeds might, by divulging titles, lead to dispute and litigation. It has however been proved most conclusively by the evidence of high legal authorities, Scotch and Irish, that no such inconvenience has been found to exist in those countries. It is proved by the same authority that a system of registration to be effectual, must be made conclusive, except in cases of fraud. If the doctrines of notice and of equitable relief in favour of a prior non-registered deed, be once admitted to defeat the simpler principles of the law, the great benefit of registration must be lost. The increased value of landed property in Scotland, and the facility with which it is used for the purposes of credit, are attributed to the existence of a registration for deeds. It is observable that it is by no means necessary that the custody of the original titles should be given up, unless the party interested should desire it for the purposes of security. It is likewise shown by the practice in Scotland that local registers may most conveniently be combined with a central registration.

These measure of reform appear to the committee likely to add to the value of real property, and greatly to lessen the existing burdens upon land. As evidence of this important fact, the testimony of Mr. Stewart is conclusive. Two acts which have recently passed, effecting a wise and salutary reform, the one dispensing with the assignment of terms, the other for



abolishing the lease for a year, Mr. Stewart states to have saved 250,000*l.* a year to parties interested in land; the alteration of the law respecting fines and recoveries must also have had a great effect; and the committee are confident that essential relief will finally be obtained for the owners of real property if parliament shall persevere in this course of sound legislation."

Then in regard to the administration of justice in criminal prosecutions, the following statement was proposed to the committee, the suggestions in which, we think, will meet with general concurrence:—

"It has been already shown, that under the arrangements recommended to parliament by government, and adopted in the year 1835, relief to the extent of 1,024,231*l.* has been given to the real property of England in the expense of prosecutions; but when it is considered that the administration of justice, so far from relating to any one peculiar interest, is of all the duties of the state that which is the most general and comprehensive, it would appear that the principle adopted in 1835 may wisely and usefully be carried still further. To ensure to all, however poor and humble, a free and effectual mode of obtaining the protection of the law; to prevent the compromise of criminal proceedings when brought against the rich and powerful; to give uniformity and stability to the administration of criminal justice, are considerations of paramount importance. These objects appear to have been greatly promoted, if not absolutely attained by the system of crown prosecutions, long practised in Scotland to the advantage and the contentment of the people of that country, and in late years most usefully extended in Ireland. Without a general system of control and direction, it would obviously be unwise that the state should assume the responsibility of defraying the charges of prosecutions; but subject to such control, it appears to the committee that a great relief may be given to the real property of England from a portion of its existing burdens, and at the same time one of the greatest and most practical reformations introduced into the administration of our criminal law.

"It is obvious that the establishment of a public prosecutor (without which such a change as is recommended would be most incomplete) should never be allowed to interfere with the right of every subject of the realm to institute proceedings on his own behalf, if he should be so minded. This right is essential to the principles of liberty; but it is perfectly compatible with the suggested change, and practically it forms a part of the law of Scotland. It is also observable that the Scotch system embraces and has facilitated the establishment of local courts for the trial of civil causes. A measure of this description could not be otherwise than a great relief from the oppressive burden of litigation to which the owners of real property, as well as other classes, are now subject."

Of the stamp laws the following important particulars are stated:—

"The stamp duties furnish instances both of exemptions granted to the landed interest, and of burdens to which they are specially subjected. The net amount of these duties for the year which has just expired is 7,660,399*l.* Some of the objections raised against these duties do not seem peculiar to real property, but are common to property of all descriptions. The unequal rate at which the smaller transactions are taxed as compared with the greater, adopting a principle the very reverse of an *ad valorem* scale, is most oppressive and unjust. 'The stamp upon a 100*l.* sale, would amount to five per cent.; upon a 300*l.* sale, would amount to 2*l.* 10*s.* per cent.; upon a 500*l.* sale, to 1*l.* 14*s.* 3*d.* per cent., and above that only to one per cent.' This is the evidence of Mr. Baxter. Mr. Stewart states that the stamp laws press most hardly upon small dealings. A proposition has been ineffectually made to parliament at a former time, to remedy these inequalities, by the introduction of a uniform and more equitable scale. This remedy deserves adoption. This branch of taxation presents other considerations of great importance. The inequalities of the legacy and probate duties, and the exemptions granted to real property of certain descriptions, have long been the subject of observation and complaint. The amount of legacy and probate duties received in Great Britain from the period of their introduction to the close of the last year amounted to 69,528,178*l.*, and the capital assessed to the legacy duty during the same time to 1,339,419,511*l.* When Mr. Pitt introduced these taxes in 1797, he proposed that they should include all property, real as well as personal. The existing exemptions in favour of land were adopted during the progress of the measure through parliament, contrary to the original intention of the minister; but great misapprehension prevails in respect to these exemptions. It is not true that all real estates are relieved from these taxes; all leasehold property is liable to duty, as well as all freehold estate directed by will to be sold, and distributed as money. When the extent and value of house property, or church lands, and other leaseholds, is considered, the greater part of which are held for terms of years, it must be clear that a considerable portion of landed estates are not included within the exemption. Yet, after making all allowances under these heads, it is still manifest that landed property enjoys a peculiar favour and advantage in respect to these taxes. Such inequality the committee are not disposed to justify; but, on the other hand, it should be borne in mind, that landed property in its conveyance *inter vivos* is burdened by much heavier charges than fall upon the transfer of personals. What justice would therefore seem to require is, a revision of the whole of these taxes on the assignment and transmission of property, both real and personal, whether made during life or after de-

cess. An equal and just apportionment of these burdens, without favour or preference to any peculiar description of property, is the remedy which the nature of the case requires."

The conclusions to which it was proposed the committee should come were as follow:—

"1. The improvement of the law of real property, the simplification of titles and of the forms of conveyance, the establishment of a general office for the registration of deeds; thus applying principles already adopted in Scotland, Ireland, and almost throughout the continent of Europe, whereby the security to landed property has been increased, and its value augmented several years' purchase.

"2. An extension of the measure of 1835, by relieving the counties and boroughs from the portion of expense to which they continue liable for criminal prosecutions. This measure, however, should be accompanied by an adoption, on the part of the state, of an effective control. The establishment of an office of public prosecutor, and the conduct of all prosecutions is recommended in the strongest manner by the example of Scotland and Ireland, as well as by the reason of the case.

"3. The revision of the stamp duties, not with a view to the reduction of revenue, but to a better apportionment of burdens; an adoption of an *ad valorem* scale of duty, relieving small properties from the present unjust and disproportionate charge; and making an equitable distribution of all duties on the sale and transmission of property, real and personal, whether during life or after decease, both on ordinary conveyances and in the shape of probate or legacy duties, so as to remedy all existing inequalities, and to repeal all undue and partial exemptions.

"4. The adoption of periodical and compulsory re-valuations for the levy of all local rates, so as to avoid the injustice and inequality of the present most anomalous system. This is consistent with the recommendation of the commissioners on local rates, and with the evidence now taken.

"5. The consolidation of the present numerous rates, levied by multiplied and sometimes conflicting authorities. There now exists in law, if not in practice, 24 rates and 54 species of officers for their imposition, levy, and administration. The number of these officers is now estimated at 180,204. The fact that many of these officers perform gratuitous service does not necessarily vary the case; it is far from being universally true that gratuitous service is always the cheapest.

"6. It has been explained by Mr. Blake, that the expense of erecting gaols, bridewells, shire halls, and similar buildings in Ireland, is provided for by the public. Advances are made by the treasury to meet those heavy branches of expenditure; these advances are made on the security of the county rate, and are repayable, without interest, by easy instalments. There appears every reason why this system should be extended to Great Britain.

"7. Where new establishments are introduced, as in the last session, for the support of lunatics, and where there are obvious reasons, both of economy and of humanity, for centralising the administration, and where, above all, the resources of the state can be made available without any risk of aggravating or increasing the evil proposed to be remedied, the committee are not prepared to justify the imposition of the whole cost upon one description of property. The committee therefore submit, whether the charge for the maintenance of lunatics in public asylums throughout the empire ought not to be undertaken by the public.

"8. More hesitation should undoubtedly be felt in respect to any part of the expenditure for the maintenance and relief of the poor; but, to a certain extent, the observations made on lunatic asylums may, with proper safeguards, be made applicable to other branches of medical relief.

"9. A charge is periodically cast upon the land for the militia rate; this is not now levied, the militia being disembodied; but, considering the object of the militia to be general, and not confined to the interests of a particular class, the committee are of opinion that this charge should be provided for by parliament, care being however taken, that if the public assume the responsibility of the charge, the government should have authority to ensure the efficiency of the force."

Some further recommendations were also proposed relating to scientific experiments for the improvement of agriculture. The proposed report also contained several statements relating to tithes and their commutation,—the land tax,—the county rate,—the highway rates,—the poor's rate,—the church rate,—the income tax;—subjects on which we have not space to enter.

## CONSTRUCTION OF THE STAMP ACT.

THE number which has just appeared of the reports of cases argued and determined in the court of Common Pleas, contains the statement of a case of some practical importance, in which that court, amongst other things held, that the draft of an agreement which was neither dated, stamped, nor signed, was inadmissible in evidence for want of a stamp. It appeared, that the plaintiff and defendant were both directors of a company, called "The Oriental, Colonial, and General Life Assurance Company;" and that the company resolved to rent a house and premises belonging to the plaintiff, for one year from

\* *Chadwick v. Clarke*, 1 Com. Ben. R.700.

the 1st January 1843, and actually entered upon the occupation, under a resolution which authorised a sub-committee, 'to take steps for the occupation of the house taken for the company.' A draft agreement, prepared by Mr. Sturmy, the plaintiff's solicitor, was submitted to Mr. Wathen, one of the company's solicitors, on the 5th January, 1843, and returned with certain alterations which were not objected to; and at a subsequent meeting of the directors a resolution was made, empowering the solicitors of the company to sign the agreement with Mr. Chadwick, on behalf of the directors. In point of fact, however, the agreement was never executed, and remained in the hands of the plaintiff's attorney. The plaintiff having brought an action of debt against the defendant, in his capacity as a director, for use and occupation of the premises, it was all but conceded on the part of the plaintiff, and the rule was distinctly recognized by all the judges, that the action could not be maintained upon any implied contract arising from the occupation, seeing that the plaintiff was as director a joint-occupier with the defendant and the other directors, and that the plaintiff's right of action was founded upon an express agreement. To prove this distinct contract, the resolutions of the board of directors already referred to, and the draft agreement which had not been executed, were tendered as evidence on behalf of the plaintiff, and respectively objected to as not being stamped. The objection, so far as regarded the resolutions, was overruled, on the ground that they were not offered as evidence of any agreement, and therefore, that no stamp was necessary;<sup>b</sup> but *Maule, J.*, who tried the cause, nonsuited the plaintiff, on the ground, that the agreement was inadmissible for want of an agreement stamp, and that without it there was no evidence of an express contract.

The question was argued upon a rule to enter a verdict for the plaintiff, and in support of the rule it was contended, that the rejected document was not "an agreement, nor a minute or memorandum of an agreement," within the meaning of the Stamp Act, but was upon the face of it a mere proposal, which did not require a stamp.<sup>c</sup> *In the King v. The Inhabitants of St.*

*Martin's, Leicester,*<sup>d</sup> *Patteson, J.*, observed, that "the statute imposed a stamp upon agreements under hand only, meaning such as have *per se* the binding effect of an agreement;" and in *Hawkins v. Warre*,<sup>e</sup> it was held, that a paper not signed by the parties did not amount to an agreement or minute of an agreement, but to a proposal only, and did not require a stamp.

In the course of the argument it was expressly laid down from the bench, that the law will not imply an agreement for the occupation of premises on behalf of a firm made by one of the parties with the rest of the firm.<sup>f</sup> The judges were unanimously of opinion, that in using the expression, any "agreement, or any minute or memorandum of an agreement made in England, *under hand only*," the legislature merely intended to denote instruments not under seal in opposition to instruments under seal; and not instruments signed by the parties. The words of the act which follows those cited, viz., "or made in Scotland without any clause of registration," showed the true construction, an instrument with a clause of registration in Scotland having the same force as an instrument under seal in England. If the instrument embodied the terms of the contract and was the agreement by which the parties were to be bound, a stamp was necessary, although no signature was attached. If the document in question was not an agreement, but a proposal only, as the plaintiff's counsel now insisted, then there was no express contract at all, and the plaintiff was remitted to the dilemma he was in before the instrument was produced. The true construction of the Stamp Act was, that where a document contained, as in this case, the terms of the agreement between the parties, a stamp was requisite to render it admissible in evidence. The court was, therefore, unanimously of opinion, that the document produced ought to have been stamped, and that the nonsuit was right.

#### NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

##### ADMINISTRATION OF CRIMINAL JUSTICE.

9 & 10 VICT. c. 24.

An Act for removing some Defects in the Administration of Criminal Justice. [26th June, 1846.]

<sup>d</sup> 2 Ad. & E. 210.

<sup>e</sup> B. & Cr. 680; 5 D. & R. 512.

<sup>f</sup> *Holmes v. Higgins*, 1 B. & C. 74; 2 Dowl. & Ry. 196.

<sup>b</sup> See *Vaughton v. Brine*, 1 Man. & G. 359;

1 Sc. N. R. 258 acc.

<sup>c</sup> *Drant v. Brown*, 3 B. & C. 665; 5 D. & R. 582.

1. *Power of criminal courts as to terms of transportation and imprisonment.*—Whereas in certain cases of felony the court is not empowered by law to award sentence of transportation for a less period than the term of the offender's life, or some long term of years, or sentence of imprisonment for any shorter term than two years; but it is desirable that some such offenders should suffer transportation or imprisonment for a shorter period respectively, at the discretion of the court before which they are convicted: Now be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That in all cases where the court is now by law empowered or required to award a sentence of transportation exceeding seven years it shall be lawful for such court, at its discretion, to award a sentence of transportation for a term of years not less than seven years, or to award such sentence of imprisonment for any period not exceeding two years, with or without hard labour, as shall to the court in its discretion appear just under all the circumstances.

2. *Repeal of provision in 4 & 5 W. 4, c. 36, as to indictments before grand jury of central criminal court.*—Indictments may now be preferred before the said court.—And whereas it is now required by law that no indictment shall be presented before the grand jury of the central criminal court for certain offences, unless the party prosecuting shall have first entered into recognizances to prosecute; be it enacted, That the said provision be and the same is hereby repealed; and that bills of indictment may be preferred by any person before the grand jury of the said court for any offence alleged to be committed within the jurisdiction of the said court in the same manner as may be done before any other grand jury.

3. *Writs for removing indictments from central criminal court to specify county, &c., in which same shall be tried.*—And whereas doubts have been raised as to the proper place of trial, where indictments have been removed by writ of certiorari from the central criminal court into the Court of Queen's Bench; be it enacted, That every writ of certiorari for removing an indictment from the said central criminal court shall specify the county or jurisdiction in which the same shall be tried; and a jury shall be summoned and the trial proceed in the same manner in all respects as if the indictment had been originally preferred in that county or jurisdiction.

4. *Certificate of recognizance filed to prosecute writ of error to be made out by the clerk of the crown, master or assistant master on the crown side of the Court of Queen's Bench, and to be a sufficient warrant for defendant's discharge.*—And whereas by an act passed in the last session of parliament, intituled "An Act to stay Execution of Judgment for Misdemeanors upon giving Bail in Error," it is (amongst other things) enacted, that the clerk

of the crown in the Court of Queen's Bench shall, for the purposes in the said act mentioned, make out and deliver certificates in writing under his hand of the due filing of record in the said court of any recognizance given to prosecute any writ of error in the manner in the said act mentioned, and that any such certificate, when duly verified by affidavit, shall be a sufficient warrant to every gaoler or other person having the custody of such defendant or defendants in execution of such judgment to discharge him or them out of custody, and also to every person having in his possession the whole or any part of any fine levied in execution of any such judgment to authorize and require the repayment thereof to the defendant or defendants; And whereas the making of such affidavit creates unnecessary expense and delay, and it is expedient to dispense with the same, and to make further provision for the making and delivery of such certificates; be it therefore enacted, That any such certificate as aforesaid under the hand either of the said clerk of the crown or of the master or assistant master on the crown side of the said court, and sealed with the seal of the Crown Office in the said court, shall be a sufficient warrant for the discharge of any such defendant or defendants, and for the repayment of any such fine.

## THE SMALL DEBTS BILL.

THE new ministry having undertaken to proceed with the bill brought in by the late government for the recovery of small debts, the clauses of which we stated at pages 211 and 243, *ante*, we now add the several schedules to the bill.

Schedule (A.) comprises two acts in the reign of William and Mary, five of George 2, forty-six of George 3, four of William 4, and two of Victoria.

Schedule (B.) contains six acts in the reign of William 4, and thirty-seven in the present reign,—constituting in all 96 local courts, which are to be included in the operation of the proposed measure.

Schedule (C.) contains the fees of the judges, the clerk, the bailiff, and the serjeant.

### SCHEDULE (A.)

Acts for the more easy and speedy Recovery of Small Debts within the towns, parishes, and places under written, and other parishes and places adjacent; (that is to say,)

Ashton-under-Lyne, 48 Geo. 3, c. xcvi.

Bath, 45 Geo. 3, c. lxxv.

Beverley, 46 Geo. 3, c. cxxxv.

Birmingham, 47 Geo. 3, c. xiv.

Blackheath, 1 & 2 Vict. c. lxxix.

Bolingbroke and Newcastle, 47 Geo. 3, Sess. 2, c. lxxviii.

Boston, 47 Geo. 3, Sess. 2, c. 1.  
 Bradford, 47 Geo. 3, Sess. 2, c. xxxix.  
 Bristol, 56 Geo. 3, c. lxxvi.  
 Bristol, 7 Will. 4, and 1 Vict. c. lxxxiv.  
 Brixton, 46 Geo. 3, c. lxxxviii.  
 Broseley, 22 Geo. 3, c. xxxvii.  
 Canterbury, 25 Geo. 2, c. xlv.  
 Chippenham, 5 Geo. 3, c. ix.  
 Cirencester, 32 Geo. 3, c. lxxvii.  
 Codeheath, 48 Geo. 3, c. 1.  
 Deal, 26 Geo. 3, c. xviii.  
 Derby, 6 Geo. 3, c. xx.  
 Doncaster, 4 Geo. 3, c. xl.  
 Dover, 24 Geo. 3, c. viii.  
 Ecclestone, 48 Geo. 3, c. clii.  
 Elloe, 47 Geo. 3, c. xxxvii.  
 Ely, Isle of, 18 Geo. 3, c. xxxvi.  
 Exeter, 13 Geo. 3, c. xxvii.  
 Faversham, 25 Geo. 3, c. vii.  
 Folkestone, 26 Geo. 3, c. xcvi.  
 Gloucester, 1 Will. & Mary, c. xviii.  
 Gravesend, 47 Geo. 3, Sess. 2, c. xl.  
 Grimsby, Great, 46 Geo. 3, c. xxxvii.  
 Hagnaby, 18 Geo. 3, c. xxxiv.  
 Halesowen, 47 Geo. 3, c. xxxvi.  
 Ipswich, 47 Geo. 3, Sess. 2, c. lxxix.  
 Kidderminster, 12 Geo. 3, c. lxvi.  
 King's Lynn, 10 Geo. 3, c. xx.  
 Kingston-upon-Hull, 48 Geo. 3, c. cix.  
 Kirby in Kendal, 4 Geo. 3, c. xli.  
 Lincoln, 24 Geo. 2, c. xvi.  
 Liverpool, 6 & 7 Will. 4, c. cxxxv.  
 Manchester, 48 Geo. 3, c. xliii.  
 Margate, 47 Geo. 3, Sess. 2, c. vii.  
 Middlesex, 23 Geo. 2, c. xxxiii.  
 Newcastle-upon-Tyne, 1 Will. & Mary, c. xvii.  
 Old Swinford 17 Geo. 3, c. xix.  
 Pontefract Honour, 2 & 3 Vict. c. lxxxv.  
 Poulton, 10 Geo. 3, c. xxi.  
 Rochester, 48 Geo. 3, c. li.  
 Saint Albans, 25 Geo. 2, c. xxxviii.  
 Sandwich, 47 Geo. 3, c. xxxv.  
 Sheffield, 49 Geo. 3, c. clii.  
 Shrewsbury, 23 Geo. 3, c. lxxiii.  
 Southwark, 4 Geo. 3, c. cxiii.  
 Stockport, 46 Geo. 3, c. cxiv.  
 Tower Hamlets, 2 Will. 4, c. lkv.  
 Westbury, 48 Geo. 3, c. lxxxviii.  
 Westminster, 6 & 7 Will. 4, c. cxxxvii.  
 Wight, Isle of, 46 Geo. 3, c. lxvi.  
 Wolverhampton, 48 Geo. 3, c. cx.  
 Wraggoc, 19 Geo. 3, c. xliii.  
 Yarmouth, Great, 31 Geo. 2, c. xxiv.

## SCHEDULE (B.)

Acts for the more easy and speedy Recovery of Small Debts within the towns, parishes, and places under written, and other parishes and places adjacent thereto; (that is to say,)

Aberford, 2 & 3 Vict. c. lxxxvi; 3 Vict. c. xxxiii.  
 Ashby-de-la-Zouch, 1 Vict. c. xv.  
 Barnsley, 1 & 2 Vict. c. xc.  
 Belper, 2 & 3 Vict. c. xcvi.  
 Blackburn, 4 & 5 Vict. c. lxvii.  
 Bolton, 3 Vict. c. xviii.  
 Brighton, 3 Vict. c. x.  
 Burnley, 4 & 5 Vict. c. lxxxiii.  
 Bury, 2 & 3 Vict. c. ci.  
 Chesterfield, 2 & 3 Vict. c. civ.  
 Crediton, 8 & 9 Vict. c. lxxix.  
 East Retford, 4 & 5 Vict. c. lxviii.  
 Eckington, 2 & 3 Vict. c. clii.  
 Exeter, 4 & 5 Vict. c. lxxiii.  
 Gainsburgh, 4 & 5 Vict. c. lxxxvi.  
 Glossop 2 & 3 Vict. c. lxxxviii.  
 Grantham, 2 & 3 Vict. c. lxxxix.  
 Halifax, 2 & 3 Vict. c. cvi.  
 Hatfield, 4 & 5 Vict. c. lxxiv.  
 Hockley, 7 Will. 4, c. viii.  
 Hyde, 3 & 4 Will. 4, c. cxix.  
 Kingsnorton, 4 & 5 Vict. c. lxxv.  
 Launceston, 4 & 5 Vict. c. lxxvi.  
 Leicester, 7 Will. 4, c. vii.  
 Loughborough, 7 Will. 4, c. ix.  
 Newark, 4 & 5 Vict. c. lxxix.  
 New Sarum, 4 & 5 Vict. c. lxxxiv.  
 New Sleaford, 4 & 5 Vict. c. lxxxv.  
 Newton Abbott, 3 Vict. c. xxv.  
 Nottingham, 2 & 3 Vict. c. cv.  
 Oakham, 1 Vict. c. xxxvi.  
 Prestbury Division of the Hundred of Macclesfield, 6 Will. 4, c. xiii.  
 Prestwich-cum-Oldham, 2 & 3 Vict. c. c.  
 Roborough, 7 Will. 4, c. lxii.  
 Rochdale, 2 & 3 Vict. c. xc.  
 Rotherham, 2 & 3 Vict. c. lxxxviii.  
 Saint Helen's, 4 & 5 Vict. c. lxxxii.  
 Staffordshire Potteries, 4 & 5 Vict. c. lxxxi.  
 Tavistock, 3 Vict. c. lxviii.  
 Totnes, 4 & 5 Vict. c. lxxx.  
 Warrington, 2 & 3 Vict. c. xci.  
 Wigan, 4 & 5 Vict. c. lxxxviii.  
 Wirksworth 2 & 3 Vict. c. cli.

## SCHEDULE (C.)

JUDGES' FEES.	On debts not exceeding 5l.		On debts exceeding £5 and not exceeding £10.		On debts exceeding £10.	
	s.	d.	s.	d.	s.	d.
For every summons . . . . .	1	0	2	0	3	0
For every hearing or trial without a jury . . . . .	2	6	7	6	10	0
For every hearing or trial with a jury . . . . .	-	-	10	0	15	0
For every order, decree, or judgment . . . . .	1	0	2	0	3	0

CLERK'S FEES.	On debts not exceeding 40s.		On debts exceeding 40s. and not exceeding £5.		On debts exceeding £5. and not exceeding £10.		On debts exceeding £10.	
	s.	d.	s.	d.	s.	d.	s.	d.
For entering every plaint . . . . .	0	6	1	0	1	6	2	0
Issuing every summons or subpoena . . . . .	0	6	1	0	1	6	2	0
Affidavit of service of summons out of the jurisdiction . . . . .	0	6	1	0	1	6	2	0
Every hearing or trial without a jury . . . . .	1	0	1	6	2	0	2	6
Adjournment of any case . . . . .	0	3	0	4	0	6	0	8
Entering and giving notice of set-off or special defence . . . . .	0	6	0	9	1	3	1	6
Swearing any witness, plaintiff, or defendant . . . . .	0	4	0	6	0	8	1	0
Entering and drawing up every judgment, decree, or order . . . . .	0	6	1	0	2	0	2	6
Copy of every order or judgment . . . . .	0	3	0	6	1	0	1	3
Every nonsuit . . . . .	0	6	1	0	2	0	2	6
Paying money into court, and entering same in books . . . . .	0	3	0	4	0	6	0	8
Notice of debt and costs or sum in full satisfaction having been paid into court . . . . .	0	6	1	0	1	6	2	0
Every receipt on payment of money out of court, exclusive of stamp . . . . .	0	4	0	6	1	0	1	3
Issuing every attachment, precept, order, warrant, or execution . . . . .	1	0	1	6	2	6	3	0
Entering acknowledgment of satisfaction in full . . . . .	0	6	1	0	2	0	2	6
Supersedeas of execution . . . . .	0	6	1	0	1	6	2	0
For every warrant of commitment for an insult or misbehaviour in the court to the judge, clerk, or other officer of the court . . . . .	1	0	1	0	1	0	1	0
Entering and giving notice of jury being required . . . . .	1	0	1	6	2	0	3	0
Issuing summons for jury . . . . .	1	0	1	6	2	0	3	0
Swearing jury . . . . .	0	6	0	9	1	0	2	0
For every hearing or trial with a jury . . . . .	2	0	3	0	4	0	5	0
Taking recognizance or security for costs . . . . .	-	-	-	-	2	6	3	0
Inquiring into sufficiency of sureties proposed, and taking bond on removal of plaint, or grant of new trial or other occasions . . . . .	-	-	-	-	3	0	6	0
Taxing Costs . . . . .	1	0	1	0	2	0	3	0

BAILIFF'S AND SERJEANT'S FEES.	On debts not exceeding 40s.		On debts exceeding 40s. and not exceeding £5.		On debts exceeding £5. and not exceeding £10.		On debts exceeding £10.	
	s.	d.	s.	d.	s.	d.	s.	d.
For calling every plaintiff or defendant . . . . .	0	2	0	3	0	5	0	6
For serving every summons, order, or subpoena within one mile of the court house . . . . .	0	4	0	6	0	10	1	0
If above one mile, then extra for every mile not exceeding seven miles from the court house . . . . .	0	2	0	3	0	4	0	4
For the execution of any warrant, precept, or attachment against the goods or body . . . . .	1	0	1	6	2	6	3	0
If above one mile, then extra for every mile not exceeding seven miles from the court house . . . . .	0	2	0	3	0	4	0	4
If an assistant serjeant should be necessary in the judgment of the court, then for assistant . . . . .	0	6	1	0	2	0	2	6
If above one mile, then extra for every mile not exceeding seven miles from the court house . . . . .	0	2	0	3	0	4	0	4
For keeping possession of goods till sale, per day . . . . .	0	4	0	6	0	8	1	0
For carrying every delinquent to prison (including all expenses and assistants), for every mile . . . . .	1	0	1	0	1	0	1	0

N. B.—The several fees payable on proceedings in Replevin to be regulated on the same scale by the amount distrained for, and on proceedings of the recovery of tenements by the yearly rent or value of the tenement sought to be recovered.

## SHORT NOTICES OF NEW LAW BOOKS.

*Conveyancing.*

**COMMON Forms in Conveyancing**, including recitals. By Charles Davidson, of the Middle Temple, Esq., Barrister-at-Law. London: A. Maxwell & Son. 1846. Pp. 231, xvi.

This is a very useful collection of Precedents for ordinary use, ably settled and well arranged.

**A Practical Guide to the Registration of Deeds and Wills in the West Riding of Yorkshire**, with the variances in the East and North Riding, and the Middlesex Registry Acts. By J. E. Dibb, Deputy Registrar for the West Riding of Yorkshire. London: W. Benning & Co., and J. Stanfield, Wakefield. 1846. Pp. 135, ix.

The revived consideration of a General Registry of Deeds renders this little work more valuable now than at any other time. The practice of the office is clearly stated.

**The Means of Dissettling and Dealing with Personal Funds settled upon Trusts**, involving Reversionary Interests in Married Women, suggested and explained. By Thomas Swinburne, M.A., of Lincoln's Inn, Barrister-at-Law. London: Blenkarn. 1846. Pp. 37.

This pamphlet deserves attention.

**A Letter to Lord Worsley on the Burtheans Affecting Real Property**, arising from the present state of the Law, with Reasons in favour of a General Registry of Titles. By Henry Sewell, Esq. London: H. Butterworth. 1846. Pp. 110.

This is an able pamphlet, and in many of the author's remarks we are inclined to concur; but before the project of a *general* Registry be entertained, we ought to see the existing registries in *Middlesex* and *Yorkshire* rendered convenient for search, and beneficial in their effects.

**A Treatise on Copyhold, Customary Freehold, and Ancient Demeane Tenure**, with the Jurisdiction of Courts Baron and Courts Leet; also an Appendix containing Rules for holding Customary Courts, Courts Baron, and Courts Leet, Forms of Court Rolls, Deputations, and Copyhold Assurances, and extracts from the relative Acts of Parliament. By John Scriven, Esq., Serjeant-at-Law. The 4th edition, embracing all the authorities to the present time. By Henry Stalman, Esq., of the Inner Temple, Barrister-at-Law. In 2 vols. London: H. Butterworth. 1846. Pp. 1279, lxxiv.

This is a careful revision of a very valuable standard work. We shall advert to the additions made since the last edition at an early opportunity.

*Chancery.*

**The Equitable Jurisdiction of the Court of Chancery**; comprising its Rise, Progress, and Final Establishment; to which is prefixed, with

a view to the elucidation of the Main Subject, a Concise Account of the Leading Doctrines of the Common Law and of the Course of Procedure in the Common Law in regard to Civil Rights; with an attempt to trace them to their Sources, and the various Alterations made by the Legislature down to the present day are noticed. By George Spence, Esq., one of her Majesty's Counsel. In 2 Vols. Vol. I. Pp. 748, lx. Stevens & Norton. 1846.

To this learned and excellent work, we have twice drawn the attention of our readers. See pp. 187, 237, and we shall be glad to see the 2nd volume as early as the learned author can find time to complete it.

*Law Dictionaries.*

**A Dictionary of English Law, Ancient and Modern**. By W. A. Best, A.M., LL.B., of Gray's Inn, Esq., Barrister-at-Law. London: Owen Richards. 1846. Part I. Pp. 96.

The law students of the present age are well supplied with convenient aids towards overcoming the thorny difficulties of their path. In lieu of the large Tomes of Tomlin, founded on the dictionary of old "Giles Jacob, Gent.," we have now many rivals of portable and convenient dimensions. We think that Mr. Whishaw's book was quite sufficient for the purpose, but doubt not that Mr. Best and Mr. Holthouse have each their several and respective merits.

**A New Law Dictionary**, containing Explanations of such Technical Terms and Phrases as occur in the works of Legal Authors, in the Practice of the Courts, and in the Parliamentary Proceedings of the Houses of Lords and Commons; to which is added an Outline of an Action at Law and of a Suit in Equity. By Henry James Holthouse, Esq., of the Inner Temple, Special Pleader. London: Blenkarn. 1846. Pp. 485, viii.

Whilst Mr. Best's work makes its appearance in numbers at stated intervals, Mr. Holthouse has the advantage of presenting his 2nd edition in a complete state.

*International Law.*

**The Law of Extradition**, comprising the Treaties now in force between England and France, and England and America, for the Mutual Surrender in certain cases of Persons Fugitive from Justice, with the recent Enactments and Decisions relating thereto. By Charles Egan, Esq., of the Middle Temple, Barrister-at-Law. Robinson, 69, Fleet Street. 1846. Pp. 62.

The recent statutes on the surrender of foreign fugitive offenders, and the discussions which have arisen on their construction, render the subject of this little treatise of considerable interest. Mr. Egan has ably and diligently executed his task.

## LEGAL AND GENERAL LIFE ASSURANCE SOCIETY.

*The following is a copy of the directors' report which was read at the last annual general meeting of this society. The Hon. Sir George Rose in the chair. We are glad to give publicity to this satisfactory statement of the prosperous progress of so respectable an institution.*

"In submitting their eighth annual report, the directors have much pleasure in referring the meeting to the account, now read, of the receipts and expenditure of the past year.

"It will be seen, that during the year 1845, the annual premiums received on policies of assurance amounted to 70,000*l.*, and the claims paid on account of deaths, to 18,000*l.* The difference between these two sums approaches nearly to the actual surplus of the year, which is 52,940*l.*, this being the addition made in the year to the property or investments of the society.

"It will be satisfactory to the meeting to be informed, that the amount of claims from deaths continues to fall short of the average indicated by the office tables. In the present year as in preceding years, the actual amount of claims has not exceeded two-thirds of the presumed or expected amount according to the tables.

"On instituting a comparison between the total receipts of the year and the office expenses, it will be found that the latter bears the proportion of 4 per cent. to the former, a percentage for expenses so small that it will not suffer from comparison with that of any other office of the same age, nor with that of most offices older than the Legal and General. If, as is probable, the proprietors' profit should hereafter amount to a further charge of 2 per cent. on the annual receipts, the total charge thereon would amount to 6 per cent. The society would, consequently, be now in a position to promise to the public, that 94 per cent. of all monies received by the society shall be held (clear of all charges) in trust for the benefit of the assured, a promise such as few offices could fulfil, whether pure mutual offices or not.

"The meeting are of course aware, that at the end of the present year the first periodical division of profits is appointed to take place. The amount of these profits must evidently be contingent in some degree on the state of the society's business during the remaining eight months, especially with regard to claims by death. In anticipation of the future, the directors are enabled to say, that they entertain a confident hope that the amount of profits will be such as to gratify the expectations of the proprietors and the assured."

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

## Courts of Equity.

## I. PRINCIPLES OF EQUITY.

## ADMINISTRATION OF ASSETS.

*Debts.—Specific legacies.*—*A.* the executor of *B.* dealt with canal shares which had belonged to *B.* as his own property, and ultimately bequeathed them to *C.*; and he gave certain other chattels, which always had been his own property, to *D.*, and died possessed of but very little other property, leaving some of *B.*'s debts unpaid, and a balance due from him in respect of his receipts and payments on account of *B.*'s estate. At his death the canal shares remained standing in *B.*'s name. *Held*, that those shares were not exclusively applicable to pay *B.*'s unsatisfied debt; but that *A.*'s general personal estate must be applied first; and that *C.* and *D.* must contribute to make up the deficiency in proportion to the value of the articles bequeathed to them respectively. *Ibbetson v. Ibbetson*, 13 Sim. 544. See *S. C.* 10 Sim. 495; 12 Sim. 206; 5 Myl. & Craig, 26.

## AGENT.

*Power of attorney.—Lease.*—In the year 1830, the plaintiffs, who were four sisters, employed a common agent to receive their rents and manage their estate: one of the sisters only resided in this country, and the agent acted under a general power of attorney executed by the three who were resident abroad. In the year 1834, the agent granted to the defendant, (who acted as under-agent upon the estate,) a lease of 16 acres, and executed same in the name of the four plaintiffs, "by virtue of the letter of attorney, bearing date," &c. At this period the agent was in embarrassed circumstances, and very shortly afterwards he absconded from the country. Upon a bill filed by the four sisters impeaching the lease: *Held*, that it could not be sustained. *Rossiter v. Walsh*, 4 Dru. & War. 485.

## ANNUITY.

1. *Policy.*—The grantee of an annuity effected a policy on the life of the grantor, at his own expense. The grantor had a power of redemption on payment of 2,500*l.*, and it was provided, that in case the grantor should, "at the time of making such repurchase," by notice in writing elect to take the policy, the grantee would assign to him any policy, "then vested" in him, which might be effected in respect of the annuity; but it was declared that it should not be incumbent on the grantor to keep on foot any policy. The policy became valuable, and the grantor gave the month's notice of repurchase, and declared his election to take the policy. *Held*, that the grantee had no right afterwards to surrender the policy for his own profit; and *Semble*, that although he might have let the policy drop, yet he was not at any



time entitled to surrender it for his own profit. *Hawkins v. Woodgate*, 7 Bea. 565.

2. *Contract*.—Vendor and purchaser.—A vendor being seised in fee of lands, subject to annuities which she had granted to an attorney in consideration of advances made and costs incurred by him, agreed to sell the lands to the plaintiff, stating to him that the grantee of the annuities would join in the conveyance. A deed of conveyance was executed by the vendor: the purchase money was not paid, but part of it was deposited with the attorney who had acted for the vendor and the plaintiff, to remain in his hands until the lands were discharged from the annuities. The plaintiff then called on the vendor and the grantee of the annuities to execute a deed of indemnity, which the parties declined to do. The vendor subsequently sold the lands to the grantee of the annuities, who had actual notice of the plaintiff's conveyance. On a bill filed to set aside the second sale:—*Held*, that the vendor was justified in treating the transaction between her and the plaintiff as incomplete, and in selling to the grantee.

It was attempted to impeach the consideration of the annuities, but *Seemle*, such a question was not open to the plaintiff. *Leader v. Ahearne*, 4 Dru. & War. 495.

3. *Injunction*.—The grantor of an annuity had admitted, in his answer to a bill in Chancery, that the annuity was a subsisting charge on his estates, and the decree and proceedings in the suit had treated the annuity as valid.

Under these circumstances, the grantor's devisee was restrained from proceeding at law to set aside the annuity for want of a memorial. *Roberts v. Madocks*, 13 Sim. 549.

4. *Policy of Insurance*.—*Contract executed*.—The grantee of a redeemable annuity effected an insurance upon the life of the grantor, and paid all the premiums, except the first, out of the annuity. The annuity deed was altogether silent as to the insurance. At the expiration of five years, pursuant to the provisions of the deed, the grantee offered to redeem, but required the annuitant to assign over to him the policy of insurance; *Held*, that the policy was the property of the annuitant, and that the grantor was not entitled, upon redeeming the annuity, to require an assignment of the policy.

Where one party seeks the execution of a contract which is still *in fieri*, the other may show that the contract was not conformable to the real intention of the parties.

But where the contract has been executed, it is not open to a party, by way of defence, to allege that the instrument does not truly ascertain the real contract of the parties.

To sustain such a defence the defendant must file a bill to reform the contract. *Law v. Warren*, 1 Dru. 31.

Cases cited in the judgment: Lord Truham v. Child, 1 Bro. C. C. 92; Hare v. Shearwood, 1 Ves. 241; 3 Bro. C. C. 168; Lord Portmore v. Morris, 2 Bro. C. C. 219; Rosemond v. Lord Melsington, 5 Ves. 40, n.; see Milliken v. Kidd, 4 Dru. & War. 274.

## APPORTIONMENT.

Executors were directed to apply a competent part of the interest of a fund towards the maintenance and education of the testator's son during his minority, and accumulate the rest; and after attaining 21, to apply a moiety of the dividends for his support till he attained 25, and to transfer the fund at 25, with a gift over if he died between 21 and 25. The son attained 21 between the periods of payment of the half yearly dividends. *Held*, that there should be no apportionment, and that he was entitled to the whole half yearly dividend received after he came of age. *Campbell v. Campbell*, 7 Bea. 482.

## CHARGE.

*Settlement*.—By a marriage settlement in 1779, lands were conveyed to the use of the husband (the settlor) for life; remainder to the wife for life; remainder to the children, as they or the survivor should appoint; and, in default of appointment, to the heirs of the body of the wife by the husband; and, in default of such issue, the lands to stand charged with a sum of 2,000*l.* to the wife's father, his heirs and assigns. In 1798, the husband and wife, by a deed reciting the first deed, that there was no issue of the marriage, and that they intended to bar all the estates and provisions in the former settlement, and to settle the lands to new uses thereby declared, covenanted to levy a fine for that purpose, to ensure to such uses as they should appoint; and, in default of such appointment, to the use of the husband for life; remainder to trustees for a term of years; remainder to the wife for life; and, after the decease of both, to the use of the heirs and assigns of the husband; and, as to the term, upon trust to raise 2,000*l.*, and pay the same to the wife, or as she should appoint, and in case of her death without appointment, to her next of kin. The fine did not bar the first charge. On a bill by the representative of the wife's father, who was also one of the next of kin of the wife, (after the death of the husband and wife without issue or appointment,) to procure both sums of 2,000*l.*, to be raised out of the settled lands. *Held*, that notwithstanding the recital in the deed of 1798, of the intention of the parties that the first charge of 2,000*l.* should be extinguished, and although such charge still remained, yet the trusts of the term for raising the second charge of 2,000*l.* were not therefore inoperative, but the same must still be carried into execution; and that both sums of 2,000*l.* must therefore be raised. *Farr v. Skerriffe*, *Dykes v. Farr*, 4 Hare, 512.

Cases cited in the judgment: Cholmondeley v. Clinton, 4 Bligh. 3, 93, 101, 102. And see Henson v. Keating, 4 Hare, 5; Neeson v. Clarkson, 4 Hare, 101; Bower v. Colby, 1 Hare, 130, 143.

## COMPOUNDING A MISDEMEANOR.

*Gaming*.—9 Anne, c. 14.—*Public policy*.—Securities given by the plaintiff to prevent a prosecution for cheating at cards, deemed to

be delivered up. *Osbaldiston v. Simpson*, 13 Sim. 513.

#### CONTRACT.

See *Vendor and purchaser*, 1.

#### CORPORATION.

See *Specific performance*, 3.

#### COSTS.

See *Settlement*.

#### COVENANT.

1. *Confirmation*.—By marriage settlement Blackacre and Whiteacre were expressed to be conveyed to trustees by *A.*, the father of *B.*, the intended husband. At the time of the settlement *A.* was not in possession of Blackacre; his title was disputed, and ultimately defeated. Whiteacre was held under leases for lives, and was subject to head rents. The settlement contained a provision, that in case *A.* should purchase the head rents of Whiteacre, they should be subject to the trusts of the settlement, and *A.* should have power to charge the property so purchased with the amount of the purchase money. By the settlement *A.* covenanted with the father of the intended wife for good title generally, and *A.* and *B.* covenanted with the trustees for good title notwithstanding any act done by them.

*A.* purchased the head rents, charged the amount of the head rent on the property, and by a voluntary deed appointed the charge to his daughter.

*Semble*, the general covenant for good title with the father of the intended wife was, in construction, to be cut down by the limited covenants with the trustees, and that therefore the defeazance of *A.*'s title to Blackacre was not a breach of covenant.

*Held*, that even though there was a breach of the general covenant, yet the appointment of the charge to the daughter was valid as against the parties entitled to damages in consequence of that breach, it not having been proved that *A.* was indebted to the extent of insolvency at the time of the appointment.

*B.* by deed confirmed the appointment to the daughter, and was the personal representative of the covenantor: *Held*, that by his confirmation he had defeated his right to sue on the covenant, and that the benefit of the covenant was lost to those entitled to estates in remainder under the settlement. *Martyn v. M'Namara*, 4 Dru. & War. 411.

Cases cited in the judgment: *Lush v. Wilkinson*, 5 Ves. 381; see *Townsend v. Westacot*, 2 Beav. 340; *Norcott v. Dodd*, Craig & P. 100; *Manders v. Manders*, 4 Ir. Eq. Rep. 334; *Prodgers v. Langham*, 1 Siderf. 133; *George v. Milbank*, 9 Ves. 150; *Trest. on Vend. & Pur.* vol. 3, p. 298.

2. *Building houses*.—A lessee covenanted to build 34 additional houses on the demised property within five years, to keep in repair the houses built and to be built, and at the end of the term to deliver them up to the lessor; and there was a proviso for re-entry on non-performance of the covenants. The additional

houses were not built, but for 46 years the lessor received the rent, and thus waived the obligation to build. The leasehold interest being sold: *Held*, 1st, that the covenant to deliver up extended to the additional houses, as well as to the houses built at the date of the demise; 2ndly, that the title was bad, notwithstanding the purchaser might retain possession until the last day of the term, and then escape liability by transferring that day to a pauper; and 3rdly, that the purchaser was not bound to accept either a compensation or indemnity. *Nouaille v. Flight*, 7 Bea. 521.

#### DEBTOR AND CREDITOR.

See *Power*, 2.

#### DEED.

*Construction*.—*Settlement*.—By marriage settlement the husband conveyed an estate in possession in Blackacre, and an estate in reversion, expectant on the life of *J. S.* in Whiteacre, and the wife conveyed certain terminable interests upon trust, after the decease of the husband, to permit the wife to receive the rents of her own lands, whether they exceeded 200*l.* a year or not; but inasmuch as the wife's lands were held for terminable interests, it was declared and agreed that her jointure during her life, should be 200*l.* a year at the least. The lands of Blackacre and Whiteacre were then charged with an annual sum equal to the deficiency arising from the rents of the wife's lands being insufficient to answer the jointure of 200*l.* a year; and it was provided, that as *J. S.* was entitled to an estate for life in Whiteacre, such part of the jointure as ought to be paid out of Blackacre and Whiteacre, should, during the life of *J. S.*, be borne out of Blackacre, and no part thereof out of Whiteacre; but if *J. S.* should die in the lifetime of the wife, that from his decease Blackacre should be released from all future payments of the jointure; and the same, or such part thereof as ought to be paid out of Blackacre and Whiteacre, should be borne out of Whiteacre and not out of Blackacre.

*Held*, on the construction of the whole instrument, that after the death of *J. S.* in the lifetime of the wife, the jointure was charged on Blackacre and Whiteacre; and that the latter clause only regulated the mode in which it was to be borne as between the lands charged therewith. *Sullivan v. Sullivan*, 1 J. & L. 678.

#### ESTATE.

See *Power*, 2.

#### EVIDENCE.

See *Settlement*, 1.

#### EXECUTORS.

*Liability*.—An executor *bond fide* invested part of the assets of the testator in the purchase of bank stock. He is not answerable for any further loss than was occasioned by his buying bank stock instead of 3½ per cent. government stock. *Hynes v. Redington*, 1 J. & L. 589.

#### LACHES.

See *Specific Performance*, 1.

## LEASE.

**Mines.—Heir and executor.—Rent.—Deed.**  
**—Construction.**—*A.* being seized in fee of lands under which were coal, iron, &c., and the surface of which was in the occupation of a tenant, executed a deed by which he sold and disposed of and granted and conveyed the mines under the land to *B.*, for 99 years, subject to the payment to *A.*, his executors, administrators, and assigns, of 7,998*l.*, by twelve yearly instalments, which were secured by powers of distress and entry reserved to him, his executors, administrators, and assigns; and the latter power provided that, upon an entry being made, the grant and conveyance, and the term thereby granted, and everything contained in the deed on the part of *A.*, his heirs, executors, or administrators, should cease, and that *A.*, his heirs, executors, &c., should not be accountable to *B.* for any of the instalments or sums of money which *B.* should have then paid in part of the purchase money for the minerals. The subsequent part of the deed contained a covenant enabling *B.*, at the end of the tenant's term, to enter upon the surface lands and to hold them for 99 years, under the yearly rent of 110*l.*, which, as well as the power of distress by which it was secured, was reserved to *A.*, his heirs and assigns. *Held*, that the instalments payable for the mines were not rent, and therefore not incident to the reversion, but personal debts due from *B.* to *A.* *Lord Hatherton v. Bradburne*, 13 Sim. 599.

And see *Agent's Power*.

## LEGACY.

**Discharge.**—*A.* agreed that a legacy given to his wife should be set off against a sum of the same amount which he owed to the testator on his promissory note; and he and his wife signed a receipt for the legacy; but it did not appear that the executors had delivered up the note to him. *A.* afterwards died, leaving his wife surviving. *Held*, that she was entitled to be paid the legacy, no release having been given for it by her husband. *Harrison v. Andrews*, 13 Sim. 595.

And see *Partnership*, 1.

## MARRIED WOMAN.

1. **Separate property.—Acquiescence.**—A married lady became entitled to an estate for her separate use, under her grandfather's will; and she and her husband joined in appointing a person to receive the rents as their agent, who, by the husband's direction, paid them to an account opened by him with *H. & Co.*, the bankers of his wife's family, and he drew cheques on *H. & Co.* for sums some of which he applied for his own purposes, and the rest to keep down the interest of incumbrances on the estate. At the husband's death a large balance remained in the hands of *H. & Co.*, which they transferred to the account of his executors; and his wife, who was his sole executrix, drew on *H. & Co.* in that character, and died about ten months after her husband. *Held*, that the balance belonged not to her, but

to her husband's estate. *Beresford v. The Archbishop of Armagh*, 13 Sim. 643.

2. **Restraint on alienation.—Clause against anticipation (in will).**—A testator bequeathed certain property upon trust for the separate use of a married daughter for life, until bankruptcy or insolvency, and to pay the income unto whom she might appoint when and as the same should become due, but not by way of assignment, charge, or other anticipation thereof; her receipts, notwithstanding coverture, to be sufficient discharges for the income. There was a gift over in trust for her children: *Held*, that the daughter could not assign her life interest. *Brown v. Bamford*, 32 L. O. 155.

3. **Consent.—Rights over reversionary choses in action.**—Discussion upon the doctrine and authorities applicable to the rights of a married woman over her reversionary interest in personal chattels.

In 1809, by a marriage settlement, a sum of 1,000*l.* was vested in trustees upon trust to pay the interest thereof to the husband and wife for their lives and the life of the survivor; and after the death of the survivor upon trust for the children of the marriage in such shares as the husband should appoint, and, in default of appointment, share and share alike. There were three daughters, issue of the marriage, and in 1824, the husband died without appointing the fund, leaving his wife and three daughters him surviving. A suit having been instituted in relation to the property of the mother and daughters, this sum of 1,000*l.* was paid into court, invested in government stock, and transferred to the credit of the cause. One of the daughters subsequently married, but without making any settlement of her share of the fund. The three daughters having attained their full age, entered into a consent, that the entire fund should be paid to the mother. This consent was signed as well by the three daughters as by the mother, and the husband of the married daughter.

Upon a bill to be filed for the purpose of effectuating this consent: *Held*, that a court of equity had no jurisdiction to take the consent of the married daughter to dispose of her interest in remainder expectant upon the death of her mother, the tenant for life of the fund, and that the bill could not be supported.

It is now established that the husband cannot, even for valuable consideration, assign the reversionary choses in action of his wife, so as to bind her surviving. *Boz v. Boz*, *Boz v. Jackson*, 1 Dru. 42.

Cases cited in the judgment: *Richards v. Chambers*, 10 Ves. 580; *Pickard v. Roberts*, 3 Madd. 384; *Woollands v. Crowcher*, 12 Ves. 174; *Howard v. Damiani*, reported in the note to *Ritchie v. Broadbent*, 2 J. & W. 456; *Doswell v. Earle*, 12 Ves. 473; *Mitford v. Mitford*, 6 Ves. 87; *Hornaby v. Lee*, 2 Madd. 16; *Purdew v. Jackson*, 1 Russ. 1; *Honnor v. Morton*, 3 Russ. 85; *Stamper v. Barker*, 5 Madd. 157; *Fraser v. Baillie*, 1 Bro. C. C. 517; *Sperling v. Rochford*, 8 Ves. 174; *Stiffe v. Everitt*, 1 Myl. & C. 37; *Scarborough v. Borman*, 4 Myl. & C. 378; *Newton v. Reid*,

4 Sim. 141; *Nieman v. Cartoney*, 3 Bro. C. C. 347, n., 368; *Socket v. Wray*, 4 Bro. C. C. 483, 485; *Macarmick v. Buller*, 1 Cox. 337; 8 Ves. 174; *Ellis v. Atkinson*, 3 Bro. C. C. 565; 2 Dick. 759; *Guise v. Small*, Anstr. 277; *Nevison v. Longden*, cited in 8 Ves. 173; *Hewett v. Crowcher*, *Gregg v. Crowcher*, 12 Ves. 175, 178; *Sturgis v. Corp.*, 15 Ves. 190; *Lee v. Muggeridge*, 1 Ves. & B. 118; *Watson v. Dennis*, 3 Russ. 90; *Ellison v. Elevation*, 13 Sim. 309; *Ashby v. Ashby*, 1 Coll. 553; *Johnson v. Johnson*, 1 Jac. & W. 472; *Donne v. Hart*, 2 Russ. & M. 360; *Major v. Lausley*, 2 Russ. & M. 355.

#### MINES.

See *Lease*.

#### MISTAKE.

An erroneous statement was made to a life insurance company by or through their agent, as to A.'s interest in his son's life; upon which the company granted a policy to A. After the son's death the company discovered the error and refused to pay the sum insured. A bill filed by A. to have the mistake rectified was dismissed, because the evidence did not show distinctly whether the mistake arose from the agent's inadvertence, or from his having been misinformed by A. *Parsons v. Bignold*, 13 Sim. 518.

Case cited in the judgment: *Ball v. Storie*, 1 Sim. & Stu. 210.

#### MORTGAGE.

1. *Notice*.—*Securities for money*.—*Tacking*.—The doctrine of tacking securities applies in Ireland as in the courts in England, except where in this country it has been excluded by the operation of the Registry Act.

The order for the appointment of a receiver on the petition of a judgment creditor is not a *lis pendens* so as to affect a purchaser with notice of the judgment.

A new security of as high a nature as the former, for the old debt and further advances, does not necessarily prejudice the old security.

A. mortgages to B., then confesses a judgment to C.; and afterwards B., without notice of the judgment, advances a further sum of money to A., who executes to him a further mortgage of the same lands for the old debt and the further advance. C. cannot redeem the first mortgage without also redeeming the second. *Tenison v. Sweeney*, 1 J. & L. 710.

2. *Surety*.—*Tacking*.—A. made a mortgage to B., and by the same deed, A. and C., his sureties, covenanted for payment of the mortgage money. B. recovered the amount from C., previously to which he lent a further sum to A., and took a further charge for it on the mortgaged property. *Held*, that C. could not compel B. to assign the mortgage to him, unless he paid off the further sum. *Williams v. Owen*, 13 Sim. 597.

3. *Taches*.—Upon the treaty for a mortgage of an estate, a person who was entitled to be recouped out of the estate, in case a certain incumbrance was levied out of his own estate, was in communication with the mortgagee upon the subject of the mortgage, but did not

inform him of his equitable claim: *Held*, that he could not afterwards set up his claim against the mortgagee.

H. confessed a judgment, and died intestate seised of fee simple estates and possessed of a term of years. G., his only son and next of kin, died under age, having bequeathed the term to M. the wife of D.; and the real estates descended on B. his heir at law. M. died, and D. took out administration to her; he was also executor to G. In 1834, D. mortgaged the term as his own property. Afterwards, in the same year, B. filed a bill against D. to have the judgment paid off out of the term; a general demurrer to this bill for want of equity was allowed. In 1835 B. filed a second bill against D. and the mortgagee of the term, for the same purpose as the former; and a demurrer by D. to this bill for want of equity was also allowed. In May, 1837, B. filed a third bill for the same purpose against D. and the mortgagee, but did not serve the mortgagee with process, or prosecute the suit. In November, 1837, D. conveyed the equity of redemption to the mortgagee. In 1841, D., as personal representative of G., obtained a decree against B., as heir of G., for payment of a sum of money; and B. did not in that suit set up any claim in respect of the judgment of H. *Held*, that under these circumstances, B. had lost his right to be recouped out of the term the amount of the judgment which was levied out of the real estate of G. in his hands.

The judgment creditor being barred from levying his debt out of the term, though not out of the real estate; the owner of the real estate is also barred of his equity to be recouped the amount of the judgment out of the term. *Boyd v. Belton*, 1 J. & L. 730. See *Dowling v. Belton*, Fl. & K. 462.

And see *Specific Performance*, 2; *Trustee*, 1.

#### NOTICE.

See *Mortgage*, 1.

#### PARENT AND CHILD.

*Undue influence*.—A niece, two months after she came of age, and after her guardians had fully accounted to her, entered into a voluntary security for her uncle, by whom she had been brought up, and who was considered by the court as standing in *loco parentis*. The court set it aside.

Where a transaction takes place between parent and child just after the child has attained 21, and prior to what may be called a complete "emancipation," without any benefit moving to the child, the presumption is that an undue influence has been exercised on the part of the child, and a party seeking to maintain such a transaction must show that that presumption is adequately rebutted.

Though courts of equity do not interfere to prevent an act even of bounty between parent and child, yet they will see that the child is placed in such a position as will enable him to form an entirely free and unfettered judgment, independent altogether of any sort of control. *Archer v. Hudson*, 7 Beav. 551.

## PARTNERSHIP.

1. *Primary charge.—Legacy.*—*A. & B.* purchased realty out of their partnership assets; which was used for their partnership purposes, and was in equity to be considered as personalty. A new partnership was formed between *A.*, *B.*, and *C.* The realty was continued to be used for the partnership purposes, but *A.* and *B.* stipulated for a rent to be paid them by the new partnership, composed of *A.*, *B.*, and *C.* *A.* died. *Held*, the property was in equity to be considered as part of his real estate.

Legatees made *bond fide* endeavours to realize the primary fund on which legacies were charged, but failed to prove the existence of such primary fund, by reason of the nonproduction of the account books. The real estate (being the secondary fund) was directed to be sold for payment of the legacies, but the decree was made without prejudice to any claim which might be made in respect of the primary fund in any other proceeding against any party who might be answerable for the same. *Rowley v. Adams*, 7 Bea. 548.

2. *Dissolution.—Motion.*—The affairs of a partnership being embarrassed, and daily growing worse, the Vice-Chancellor of England, on motion, appointed a person to sell the business and wind up the affairs of the partnership. *Bailey v. Ford*, 13 Sim. 495: See *Oliver v. Hamilton*, 2 Anst. 453; *Chapman v. Beach*, 1 J. & W. 594.

## PORTIONS.

By marriage articles it was agreed that 6,000*l.* should be vested in trustees in trust for all and every the child and children of the marriage, (other than the one son for whom a portion of 30,000*l.* was provided,) the said 6,000*l.* to be paid to such child or children in such shares, at such times, and subject to such provisoes for maintenance and education until their shares should become payable, as the intended husband should by deed or will appoint; and in default of appointment, to be paid to such child or children, and to be equally divided among them; the shares of sons to be paid at 21, and of daughters at 21 or marriage; and in the mean time, until their portions should become payable, to apply the interest of their shares towards their maintenance and education; and in default of any issue save an only son, in trust for the intended husband, his executors, administrators, and assigns.

There was issue of the marriage one son and two daughters, all of whom survived their parents. One of the daughters died under age and unmarried; the other attained her age of 21. *Held*, that the daughters took vested interests in the 6,000*l.* on being born; and that the share of the one who died under age vested in her personal representatives. *Hynes v. Redington*, 1 J. & L. 589. See *L. & G. Temp. Plunk.* 33.

## POWER.

1. A trust term created by marriage settlement to raise 1,000*l.* on the decease of the sur-

vivor of the husband and wife, in case there should be no issue of the marriage living at her death, and to pay the same to such person or persons as the wife "at any time or times thereafter during her coverture" should by deed or will appoint; and in default of appointment, to the executors, administrators, and assigns of the wife's mother: There was no issue of the marriage, and the wife survived the husband, without having exercised her power of appointment during the first coverture: She afterwards married a second time, and had issue by her second husband, and died, leaving such issue, her second husband, and her mother surviving. The mother afterwards bequeathed her residuary estate and died.

*Held*, that the power given by the settlement to appoint the 1,000*l.* could not be exercised during the widowhood of the donee, or during any other than the first coverture.

That the executors of the mother were entitled to take the 1,000*l.* and interest as part of her residuary personal estate. *Morris v. Howes*, 4 Hare, 599. See *Horsman v. Abbey*, 1 J. & W. 381.

Cases cited in the judgment: *Daniel v. Dudley*, 1 Phil. 1; *Bulmer v. Jay*, 3 Myl. & K. 197; *Palin v. Mills*, 1 Myl. & K. 470.

2. *Voluntary conveyances.—Debtor and creditor.—Estate.*—*A.* tenant for life, remainder to *B.* in tail. *A.* confesses a judgment, and afterwards *A.* and *B.* suffer a recovery, and by deed of July, 1810, declare the uses as to Blackacre, that the recoverors should stand seised thereof in trust to sell, and apply the money in discharge of incumbrances affecting Blackacre and Whiteacre; and subject thereto to the use of *A.* in fee; and as to Whiteacre to secure an annuity to *B.* during the joint lives of *A.* and *B.*; and, subject thereto, to the use of *A.* for life, and after his decease to secure a jointure for his wife, and then to trustees for a term; and, subject thereto, to *B.* and his issue in strict settlement; and *A.* and *B.* were empowered jointly to revoke all or any of the uses or estates thereinbefore limited or declared of the said lands, or any part thereof, save as to the jointure and the term, and to appoint new uses.

*Held*, 1. On the construction of the whole instrument, that the power did not authorize the revocation of the uses as to Blackacre.

By deed of September, 1810, reciting the settlement of July, 1810, and that *A.* was indebted in sundry sums of money, which Blackacre might not be sufficient to discharge; *A.* and *B.* revoked the uses of the settlement of July, and declared that the recoverors should stand seised of Blackacre, in trust to sell, and apply the money in discharge of incumbrances affecting all the lands, and then of incumbrances affecting the estate or person of *A.*, and subject thereto, to the use of *A.* in fee; and in case Blackacre should not produce sufficient to pay the debts affecting the person or property of *A.*, Whiteacre (subject to the annuity, the jointure, and the term of years,) was charged with the same to the extent of 4,000*l.*;

and, subject thereto, was limited to *A.* and *B.* and his issue, in strict settlement; with the like power of revocation as that contained in the deed of July, 1810. No creditor was a party to either of these deeds.

*Held*, 2. That the settlement of July was superseded by the deed of September; and that *A.* and *B.*, by reason of their reserved power to revoke the uses of Whiteacre, and of their inherent power to annul the uses of Blackacre, so far as they related to themselves, had complete dominion over Blackacre.

3. That the recoverors took the legal estate in Blackacre; and that there was not a momentary seisin thereof in *A.*

*C.* agreed to become the purchaser of Blackacre for 9,500*l.*; and by indenture of November, 1811, in which the recoverors were named as parties, but which was executed by one of them only, in consideration of 9,400*l.*, to be applied by *C.* in discharge of the judgments mentioned in the schedule, (amongst which was the judgment against *A.*), the recoverors, with the consent of *A.* and *B.*, conveyed Blackacre to *C.* in fee; and by deed of equal date *A.* and *B.* revoked the uses of the settlement of September, 1810, as to Whiteacre; and limited said lands to trustees for a term, upon trust, to indemnify *C.* and Blackacre against all incumbrances. There being a dispute as to who were the persons beneficially entitled to the money secured by the judgment, it was agreed between *A.*, *B.*, and *C.*, that the latter should retain 1,000*l.* of the purchase money for the purpose of satisfying it. *C.* afterwards, with the consent of *B.*, paid the 1,000*l.* to *A.*; and in 1812, the recoverors conveyed the legal estate in Blackacre to *C.*, declaring that they were not to be answerable for the application of the purchase money. The persons entitled to the judgment were not, nor were any of the creditors parties to any of the deeds.

*Held*, 4. That the persons entitled to the judgment were not entitled to call for an execution of the trust in the deed of September, 1810.

5. That if the sale to *C.* were a due execution of the trust, the equitable fee of *A.* in Blackacre was thereby defeated, and the judgment was not a lien in the hands of the purchaser.

6. That if it were not, then, as the legal estate was conveyed to the purchaser by the trustees before execution sued, the judgment creditor could not attach the lands in the hands of the purchaser, though he purchased with notice of the judgment.

*Semble*, 1. That if the parties to the creation of a trust for payment of debts, to which the creditors are not parties, communicate its existence to a creditor, and induce him to act or forbear on the faith of that communication, they cannot afterwards revoke the trust as to that creditor.

2. That the sale to *C.* was a due execution of the trust.

Voluntary settlements, and voluntary conveyances to trustees for payment of debts differ. When under a voluntary settlement

the fund has been actually vested in trustees, though there has been no consideration for the creation of the trust, and though the fund has got back by accident into the possession of the person who created the trust, yet the trust may be enforced for the benefit of the volunteers. *Browne v. Cavendish*, *Cavendish v. Browne*, 1 J. & L. 606.

Cases cited in the judgment: *Foster v. Blackstone*, 1 M. & K. 311; *Hunt v. Coles*, 1 Com. 226; *Harris v. Pugh*, 4 Bing. 335; *Neate v. The Duke of Marlborough*, 3 M. & C. 407; *Wallwyn v. Coutts*, 3 Mer. 707; *Garrard v. Lord Lauderdale*, 3 Sim. 1; *Acton v. Woodgate*, 2 M. & K. 492; *Gibbs v. Glamis*, 11 Sim. 584; *Ravenshaw v. Hollier*, 7 Sim. 3; *Colver v. Countess of Mulgrave*, 2 Keen, 81; *Bill v. Cureton*, 2 M. & K. 603.

3. *Fraudulent appointment. — Setting aside deed.*—By a marriage settlement of the year 1780, certain lands were settled upon the husband for life, with remainder to the use of all and every, or such one or more, of the children of the marriage, for such estate not exceeding an estate in tail male, as the husband should appoint; and in default of appointment, to the first and other sons of the marriage in tail male.

By a deed poll of the 14th of Jan., 1804, the father appointed the lands to his eldest son in tail male; and by an indenture of lease executed on the 15th of the same month, the father and son, in consideration of the sum of 1,600*l.*, therein stated to be applied in payment of debts affecting the estate of the father, and renewal fines then due, demised part of these lands for lives renewable for ever. By deed of the 11th of Dec., 1807, the son, in consideration of the several debts paid for him by the father, and in discharge of the trust and confidence reposed in him, conveyed the lands included in the settlement, and all his interest therein, to the father, his heirs and assigns. In 1815, the son died intestate, and without issue, leaving his father surviving; and in 1821, the father, by his will, devised the lands, charged with certain legacies, to the use of his two surviving sons and their respective issue, in equal portions, as tenants in common. In 1822, the father died; and in 1836 the plaintiff, who was the third son, filed his bill to carry into execution the trusts of the will of the year 1821. By a decree of the House of Lords, reversing the decree of the court below, it was declared that before any adjudication could be had on the title of the father to dispose of the lands in question, an inquiry should be instituted into the validity of the appointment.

In pursuance of this declaration an inquiry was directed before the Master, and he reported that at the time of the execution of the appointment and lease of 1804, there were judgments appearing upon record against the father to the amount of 2,400*l.*; that all these judgments were satisfied upon the same day, being a day after the execution of the said lease; but that he was unable to state how the consideration money of the lease had been applied, no evidence having been laid before him, save so far

as the statements in the deeds of 1804 and 1807 relate thereto, and the facts in relation to the judgments, might be deemed evidence thereof.

The cause having come on to be heard upon this report: *Held*, that the deeds of 1804 and 1807 were fraudulent and void, as constituting a dealing by a father for the benefit of himself, and not of his son, and ought to be set aside.

Where a power is vested in a father, and a stipulation is made by him for his own benefit in the exercise of it, a court of equity considers such a disposition as a fraud upon the power; the fraud consists not in the selection by the father of one child in preference to another, but in the arrangement which makes the appointment, though in form to the child, in effect an appointment to the father himself.

To render such an appointment fraudulent, it is not necessary that it should be wholly for the benefit of the father, it is enough that it is partially so.

*Semble*, That the will of the father in 1821 could not be supported as an execution of the power reserved by the settlement of 1780.

Supposing the appointment by the deed of 1804 to have failed, *quere*, what was the operation of the conveyance of 1807? How far was the power affected by the union of the two estates in the father? *Jackson v. Jackson*, 1 Dru. 91, S. C., 7 Clark & F. 977, West, 576.

#### PRINCIPAL AND SURETY.

Surety by promissory note, for a floating balance due to bankers from a customer, held released by the bankers crediting the customer by the full amount of the note, without advancing the money at the time. *Archer v. Hudson*, 7 Bea. 551.

#### RELIGIOUS WORSHIP.

See *Trustee*, 2.

#### SET-OFF.

See *Vendor and Purchaser*, 2.

#### SETTLEMENT.

1. *Portions.—Vested interest.—Evidence.—Declarations, post hitem motam, admissibility of.*—By a marriage settlement of the year 1795, reciting the intended marriage, and that the father of the lady, for the purpose of securing a provision for her, by way of maintenance, and for the purpose of providing for the issue of the marriage, had agreed to secure a sum of 4,800*l.*, as her portion, in the manner therein mentioned, it was witnessed that the father, in pursuance of that agreement, conveyed certain lands, of which he was seised in fee, to trustees, for the term of 99 years, upon trust, to raise thereout 1,000*l.*, (part of said sum of 4,800*l.*), and pay same to the intended husband for his own use; and to permit the said intended husband to receive the interest on 1,300*l.*, further part of said 4,800*l.* for his life; and if the intended wife should survive him, to permit her to receive the interest of the said sum of 1,300*l.* for and during her life; and after the decease of the said intended wife and her father, to pay the principal sum of 1,300*l.* to the said intended husband, if he should be living, and if dead, to his executors or administrators.

The further trusts of the term were declared to be, that if there should be any child or children of the marriage, the trustees should raise the sum of 2,500*l.*, being the residue of the said sum of 4,800*l.*, and pay the same to the children, if more than one, in such shares and at such times as the intended husband should appoint; and in default of appointment, to pay same in equal shares, if more than one, and if but one, the whole to such one, at his or their age or ages of 21 years, or to such of them as should be daughters, at her or their age or ages of 21 years, or day or days of marriage. It was also expressly declared that the said intended husband should receive the interest of this sum of 2,500*l.* during his life; but that neither principal nor interest should be raised during the lifetime of the father of the wife. And the settlement contained a provision, that in case there should be no issue of the marriage, no part of the sum of 2,500*l.* should be raised.

There was only one child of the marriage, who died within a few days after its birth:—

*Held*, upon the true construction of the settlement, that the child at the moment of its birth, took a vested interest in the sum of 2,500*l.*, and that the plaintiff, as his personal representative, was entitled to have same raised out of the estate.

The right to interest upon the sum of 2,500*l.* was limited to the year 1825, the period at which the claim to this sum was first put forward: but interest upon the sum of 1,000*l.* and 1,300*l.* was allowed; upon the former from the filing of the original bill in the year 1800, and upon the latter, from the accruer of the right to that sum.

An issue had been directed in the cause to inquire whether the child was born alive or not. At the trial, evidence was received of declarations made by certain members of the family shortly after the death of the child: *Held*, upon a motion for a new trial, that the evidence was properly received.

The point of inquiry respecting the admissibility of such evidence is not the existence of a state of facts out of which a claim has arisen, but the existence of a controversy or dispute respecting that claim. The case of *Walker v. Countess of Beauchamp*, (6 Carr. & P. 552), considered. *Reilly v. Fitzgerald*, 1 Dru. 122; see *Pulmer v. Lord Aylesbury*, 15 Ves. 176.

Cases cited in the judgment: *Berkeley Peerage Case*, 4 Campb. 401, 410; *Whitelocke v. Baker*, 13 Ves. 511, 514; *Hayward v. Firmis*, 4 Campb. 410; *Goodright v. Moss*, Cowp. 391; *Monkton v. The Attorney-General*, 2 Russ. & M. 147, 161; *Slaney v. Wade*, 1 Mylne & Cr. 358; *Poulet v. Poulet*, 1 Vern. 804; 2 Chas. Rep. 286; 2 Ventr. 366; *Ward v. Dyes*, Lloyd & G. temp. Sugden, 177.

#### SETTLEMENT.

2. *Mistake.—Costs.*—Bill to reform a settlement, on the ground that it was not in conformity with the contract of the settlor. The settlement was not consistent with the instructions of the settlor, so far as they appeared in

evidence; and the prior and subsequent acts and declarations of the settlor were consistent with the instructions and inconsistent with the settlement; but it did not appear what was the final contract of the parties; yet, as it was possible, though not probable, that the settlor might have agreed to make such a settlement as was in fact executed, the Lord Chancellor of Ireland refused to relieve, on the ground of mistake, or of fraud, which was charged, but not proved; and the bill was dismissed, but without costs. *Bunbury v. Lloyd*, 1 J. & L. 638.

And see *Charge; Deed*.

#### SPECIFIC PERFORMANCE.

1. *Agreement. — Laches.*—An instrument under seal, whereby A. (tenant for life with a leasing power) "sets" to A. certain lands for the term of one life, (not naming the *cestui que vie*); lease to be perfected at the request of A., and the costs of B., with the usual clauses between landlord and tenant; and on which was endorsed a memorandum stating the name of the *cestui que vie*, is not an actual demise, but only an agreement for a lease.

The doctrine of laches does not apply to a bill for the specific performance of an agreement for a lease which is in point of fact executed; both parties being from the time of the contract, in possession of the benefits thereby given them.

A verbal agreement to accept a lesser rent than that mentioned in an agreement to grant a lease, followed by acceptance thereof, is not *per se* an abandonment of the former contract; nor does it operate as a substitution of a new agreement for the former one, or as the creation of a new tenancy in which the old tenancy merged.

A landlord filed a bill for the specific performance of a contract to accept a lease at the rent mentioned in the agreement, but which had been afterwards, by parole, reduced; and at the bar he undertook to execute a lease at the reduced rent. The Lord Chancellor of Ireland decreed accordingly, but without costs, because of the conduct of the parties. *Clarke v. Moore*, 1 J. & L. 723.

Cases cited in the judgment: *Price v. Dyer*, 17 Ves. 356; — *v. White*, 3 Swanst. 108, n.

2. *Mortgage. — Tenant for life.*—A father (tenant for life), and a son (tenant in tail), in 1831, joined in mortgaging the estate to secure payment of a debt of the son, under an agreement between them to suffer a recovery and re-settle the estate, as to the remainder after the death of the tenant for life, in case the father should at any time be obliged to pay any part of the interest of the mortgage debt, or the son should not pay off that debt by a certain day, and the father should then pay it off and release the son therefrom, to the use of the father in fee; the father covenanting to convey or devise a seventh part of the estate to the son; and, in case the son should pay off the mortgage by the time mentioned, then to the son and the heirs of his body, charged with 500*l.* for such per-

sons as the father should by deed or will appoint. The son did not pay off the mortgage debt, nor did the father pay it off, or release the son therefrom, but the father paid the interest until his death, in 1841, and after his death his devisees paid off the mortgage. *Held*, that, neither party having performed the agreement, or apparently acted upon it, in the lifetime of the father, a court of equity would not, after the death of the father, enforce the specific performance of the agreement; nor would the court, in such a case, enforce specific performance of an agreement, which, apparently, was an agreement for the sale of the son's reversionary interest in the estate at an undervalue.

That, as the agreement could not be specifically performed, the original rights of the parties remained; and the son was therefore entitled to redeem the estate, upon repayment of the mortgage debt and the interest. *Playford v. Playford*, 4 Hare, 546.

3. *Corporation.*—Covenant, in February, 1841, by a municipal corporation to build a market forthwith. Bill, in September, 1843, for specific performance of the covenant. Answer, in December, 1843, stating that the corporation had not, until recently, determined for what goods the market should be adapted, and that the building should proceed with due diligence. At the hearing, in June, 1844, the cause was ordered to stand over for six months. In May, 1844, the corporation approved of the plan for the market; and in July, 1844, they met to consider the order in the cause, and subsequently built the market. The Vice-Chancellor *Wigram* stayed all proceedings without costs.

A suit for specific performance of a contract was, at the hearing, ordered to stand over. The contract being afterwards performed, it was held to be regular for the plaintiff to bring before the court, upon petition, the facts which had taken place subsequently to the answer. *Price v. The Mayor, &c., of Penzance*, 4 Hare, 506.

4. *Part performance.*—Proceedings taken by defendants towards the fulfilment of a contract for the erection of a certain building may enable a court of equity to decree a specific performance of the contract, in a case where without such proceedings it might have been difficult to define what would be a sufficient performance. *Price v. The Mayor, &c., of Penzance*, 4 Hare, 509.

5. A. contracted to sell a wharf on the banks of the Thames, with a jetty. The jetty turned out to be liable to be removed by the corporation of London, if they thought fit. *Held*, that the jetty was essential to the beneficial occupation and enjoyment of the premises contracted to be sold, and that a specific performance could not be decreed. *Peers v. Lambert*, 7 Bea. 546.

#### TENANT FOR LIFE.

*Survivorship of children.*—Where the only gift to a class consisted of a direction to divide and pay, upon the death of the tenant for life. *Held*, upon the context, that those only took who survived such tenant for life.



A testator made a direct gift of his real and personal estate to his wife for life, and after her death he directed his executors to sell and "divide and equally pay" the produce amongst a class of children; and in case of the death of the children in the lifetime of the wife, leaving issue, he directed his executor to "pay" unto the issue his parent's share. *Held*, that those children and issue were alone entitled who survived the tenant for life. *Beek v. Burn*, 7 Bea. 492. See *Leake v. Robinson*, 2 Mer. 387; *Davies v. Fisher*, 5 Bea. 209.

And see *Specific Performance*, 3.

#### TITLE.

Upon a loan of money, the borrower conveyed lands to the lenders and their heirs, upon trust to sell and repay themselves, and to pay the surplus and convey the unsold land to the borrower. The lands having been sold under a decree in a suit to carry the trust into execution: *Held*, that a good title might be made to the purchaser without the concurrence of the creditors of the borrower, by judgment confessed after the execution of the trust deed.

In 1745, *J.* executed a settlement of lands, reserving power, with the consent of *A.*, to revoke the uses. The abstract of title set forth a will of *J.*, dated 1761, whereby he, with the consent of *A.* revoked the uses; and it referred to a copy of the will. *P.* the son and heir of *J.*, by indenture of 1763, reciting the will of his father, resettled the estates; and possession had since gone accordingly. The will was not forthcoming: *Held*, that its non-production was not an objection to the title.

The abstract stated a deed of March 1814, making a tenant to the precipe, which recited articles of February 1814, between the father, tenant for life, and his son, tenant in tail, empowering them to revoke the uses hereby declared: and the recovery was declared to enure to the uses in the articles. In 1815, the father and son revoked the uses and resettled the estates, and possession had gone accordingly. The abstract stated, that the articles had been lost; and it appeared that search had been made for them: *Held*, that their non-production was not an objection to the title.

If counsel for the purchaser waive the production of a particular document, stated in the abstract to be lost, and the purchaser adopt that opinion, and deal with the seller upon that view, he will not be permitted to repudiate the opinion of his counsel. *Alexander v. Crosby*, 1 J. & L. 666.

Case cited in the judgment: *Conlner v. Morgan* 18 Ves. 341.

#### TRUSTEE.

1. *Bond debt. — Priority. — Mortgage. — A. B.* and the other committee-men of a public company mortgaged the company's estate, and covenanted personally to pay the money. They afterwards entered into a personal obligation by bond, for another debt. *A. B.* died, having certain shares vested in him as trustee to the company. By the decree, the shares were ordered to be sold, and the produce applied in payment

of the debts of the company, for which the estate of *A. B.* was liable: *Held*, that the representatives of *A. B.* had a right to have the fund applied in payment of the bond debt, in priority of the mortgage debt. *Lawrence v. Kempson*, 7 Bea. 574.

2. *Religious worship. — Kirk of Scotland. —* By an agreement made in 1794, a plot of land and certain premises thereon, situated in Oldham Street, Liverpool, were vested in trustees, to be used as a place of religious worship, "according to the ordinances, rules, and forms of the Church or Kirk of Scotland," and a subsequent conveyance was made of the same land and premises to the trustees, "to be for ever thereafter appropriated and used as a place of divine worship according to the doctrines and discipline of the Church of Scotland." The premises were thenceforward occupied as such place of worship, and the office of minister or pastor of the congregation was filled from time to time by licentiates of the Church of Scotland, who were ordained and inducted by presbyteries in Scotland. In 1833, a Lancashire Scottish Church Presbytery was formed, to which the Oldham Street congregation united themselves, and the Lancashire presbytery and other presbyteries in England, in 1836, united themselves into an English synod, which synod was in 1839 recognised by the General Assembly of the Church of Scotland. In 1842, a licentiate of the Church of Scotland, by license from the presbytery of Greenock, was ordained and inducted as minister of the Oldham Street church, according to the Presbyterian forms, by the Lancashire presbytery. In 1843, certain ministers and members of the Church of Scotland adopted the name of the Free Church, and seceded from the established church, and were declared by that church to be no longer ministers thereof. The English synod declared its disapproval of the conduct of the established church of Scotland, and its sympathy with the free church, recognising the latter as a sister church, and resolving to interchange ministers therewith. The minister of the church and the trustees of the premises in Oldham Street co-operated with the seceders by allowing ministers of the free church to officiate in the church in Oldham Street, and the minister, who was deprived of his license by the presbytery of Greenock, also continued to officiate. *Held*, upon motion, that the minister and the trustees had departed from the trusts created by the original contract upon which the premises in Oldham Street were vested in them; and that the court would interfere by injunction, before the hearing, to prevent the premises in Oldham Street from being used otherwise than as a place of religious worship on the model of the Church of Scotland as established by law. *Attorney-General v. Welsh*, 4 Hare, 572.

Cases cited in the judgment: *The Presbytery of Auchterarder and others, v. The Earl of Kinnoul*, 6 Clark & F. 646; *Robertson's Report of the same case*, 2 vols.; *Ferguson v. Earl of Kinnoul*, 1 Bell's Appeal Cases, (Scotch.) 662.

3. *Power of sale. — Trustee. —* In the year 1801,

on the occasion of the marriage of *A.*, who was an infant, with *B.*, articles were executed, whereby it was provided, that certain estates, situate in England, to which *A.*, in common with her sisters, was entitled in remainder expectant upon the decease of her father, *M.*, who was tenant for life thereof, should, upon *A.*'s attaining her full age, be conveyed unto *N.* and *O.* upon trust for the husband and wife, and the younger children of the marriage; and by those articles it was provided, that the trustees should have power, with the consent of *A.* and *B.*, "to sell the whole or any part of the said lands of *A.*," and invest the produce in land or government securities upon the trusts therein specified. In 1804, upon *A.*'s attaining her full age, a settlement was executed according to the provisions of the articles: and the power of sale therein contained authorised the trustees to sell, with the consent of *A.* and *B.*, "the whole or any part of the said *A.*'s estate and interest" in the said lands: and *B.* covenanted, that he and his wife *A.* would levy a fine to ensure to the uses of the settlement.

In the year 1812, the estates in question, as well the remainder as the tenancy for life were sold, the tenant for life consenting to receive a proportion of the purchase-money equivalent in value to his life estate, according to the calculation of a notary. The sale was had without the intervention of the trustees, though with the full knowledge of one of them, *N.*, as it was alleged; and of the share of the produce to which *A.* was entitled, a sum amounting to 6,332*l.* was subsequently laid out in personal securities.

In the year 1839, after the death of *N.*, upon a treaty between *O.* the surviving brother, and *A.* and *B.* and the plaintiff, who was the only younger child of the marriage, the plaintiff, and *A.* and *B.* for valuable consideration released *N.* from all claim and responsibility in respect of the trusts of the articles and settlement, and *N.* assigned to a new trustee for said parties the securities upon which the trust funds had been invested.

On the bill subsequently filed by the plaintiff against *O.*, and the personal representatives of *N.* and others: *Held*, that there was no breach of trust committed by the exercise of the power of sale in the lifetime of the tenant for life, inasmuch as upon the construction of that power, such an immediate sale of the estate in remainder was fully warranted.

The sale in question ought to have been conducted by the trustees; but after so great a lapse of time, and there being no suggestion that the sale had been made at an undervalue, or that the produce was not forthcoming: *Held*, that the bill could not be supported.

Generally speaking, where a sale has been made without the concurrence of the trustees, if the sale was a proper one, and the trustees have adopted it, a court of equity will carry it into execution.

*Held*, also, that the deed of release of 1839, to the trustee *O.*, operated as a release to the personal representative of the deceased trustee

*N.*, such deed amounting in fact to an acceptance by the plaintiff of the several securities, upon which the purchase money had been invested. *Blackwood v. Borrowes*, 4 Dru. & War. 441.

Case cited in the judgment: *Durnford v. East*, 1 Bro. C. C. 106.

4. *Liability. — Government security.* — The testator directed his trustees to invest the residue of his personal estates in government or real securities. Some of the *cestuis que trusts*, and one of the trustees, permitted the trust monies to remain in the hands of the other trustee at interest. *Held*, that, inasmuch as no investment was made, the trustees were chargeable with the whole amount of the trust funds possessed by them, with interest, but were not answerable for the amount of consols, or any particular security, in which they might, according to the directions of the will, have invested the trust monies. *Shepherd v. Moul*, 4 Hare, 500.

Cases cited in the judgment: *Marsh v. Hunter*, 6 Madd. 293; *Hockley v. Dantock*, 1 Russ. 141; *Watt v. Girdlesone*, 6 Beav. 188; see *Ames v. Parkinson*, 7 Beav. 379, 385; *Rowley v. Adams*, 7 Beav. 419.

5. *Liability for bankers.* — Trustee depositing a trust fund with his bankers, accompanied by an order in writing to invest the money in consols, answerable for the omission of the bankers to make the investment, where he made no subsequent inquiry respecting it, until about five months afterwards, when the bankers became bankrupt. *Challen v. Shippam*, 4 Hare, 555.

6. *Devise. — Liability.* — A testator devised real and personal estate, on certain trusts, which, as the court considered, the testator intended to be performed by his trustees named, and the survivors and survivor, and by the heirs and assigns, or by the executors or administrators of the survivor. The will contained no power to appoint new trustees. The surviving trustee devised and bequeathed the trust estates and powers to *A.*, *B.*, and *C.*, upon the trusts of the first will. *Held*, that this devise and the appointment of *A.*, *B.*, and *C.* as trustees were valid.

Where a trust estate is limited to several trustees, and the survivors and survivor of them, and the heirs of the survivor of them, the surviving trustee does not commit a breach of trust by not permitting the trust estate to descend, or by devising to proper persons, on the trusts to which it was subject in the hands of the surviving trustee. *Semble*, *Tilley v. Wolstenholme*, 7 Bea. 425.

Case cited in the judgment: *Down v. Worrall*, 1 Myl. & K. 561.

#### VENDOR AND PURCHASER.

1. *Construction of contract.* — Construction of a contract for the sale of a leasehold estate, whether it was a contract for a sale of the vendor's interest in the lease, whatever it might be, or that a good title to the leasehold estate should be made out.

Under a contract to make out a good title to a lease for lives renewable for ever, the vendor must show who are the lives in existence at the time of the contract. *Anderson v. Higgins*, 1 J. & L. 718.

2. *Set off*.—A purchaser, being a creditor of the agent of the vendor of an estate, is not entitled, by agreement with the agent alone, to place the debt due to the agent to the debit of the principal on account of the purchase money.

A. employed B. to sell his estate and receive the purchase money. B. sold it to C. An account was afterwards settled between B. and C., whereby, after giving credit for monies paid on account of the purchase, and a private debt of 550*l.*, due from B. to C., a small balance appeared due on account of the purchase money, which C. then paid to B. A. afterwards, in ignorance of the arrangements between B. and C., executed the conveyance, and signed a receipt for the whole purchase money, which were handed over by B. to C. *Held*, that the arrangement for setting off B.'s private debt was invalid, and that C. was still liable to A. for the 550*l.* *Young v. White, White v. Young*, 7 Bea. 506.

#### VOLUNTARY SETTLEMENT.

*Limitations to collaterals*.—By a marriage settlement, an estate, the property of the wife, was limited, in default of the children of the wife, to trustees in trust to sell and divide the proceeds amongst the brothers and sisters of the wife. The husband agreed to sell the estate; and he and his wife joined in conveying it to the purchaser by deed and fine. The wife died without issue. *Held*, that the limitation in favour of her brothers and sisters was voluntary, and therefore void as against the purchaser. *Cotterell v. Homer*, 13 Sim. 506.

And see *Power*, 2.

#### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

##### Rolls Court.

*Attorney-General v. Corporation of Leicester*.  
June 30.

#### ALTERATION OF REPORT AFTER CONFIRMATION.

*Before a report can be altered after confirmation the order should be obtained to take it off the file.*

In this case a report of the Master finding that a certain proceeding would be beneficial to a charity had been confirmed. Afterwards it appeared to counsel that upon the face of the report the proceeding sanctioned was not beneficial to the charity. The subject was accordingly brought to the attention of the court, which discharged the order for confirming the report, and referred it back to the Master to consider the objections taken. The Master concurred in the objection, but felt a doubt as to his power to amend the report.

Mr. Blount now mentioned the question to the court.

Lord Langdale expressed his opinion that the report must, under the circumstances, be treated as a draft report only, but that there should be an order for taking the old report off the file, which was made accordingly.

##### Vice-Chancellor of England.

*Carter v. Ebbetts*. July 6.

#### ANSWER.—PRODUCTION OF DOCUMENTS.

*A defendant having by his answer admitted that a deed was in his possession or power, believing at the time that it was in the possession of his solicitor, but which proved not to be the case. Held, that an affidavit could not be received to show his mistake, and that the usual order must be made for its production.*

THE defendant in this case, by his answer, which was sworn the 24th of April, 1846, admitted that he had in his possession or power the several deeds and documents therein specified. Amongst these was a lease which he supposed to be in the possession of his solicitor, but a motion being now made for the production of it together with the other documents, an affidavit was produced sworn by the defendant, in which he stated that the last time he saw the lease was in January, 1844; and that he found he was mistaken in supposing that it was in the possession of his solicitor.

Mr. Cole for the motion.

Mr. Bichner contra.

The Vice-Chancellor said, that if the defendant had wished to escape from the consequences of a misstatement in his answer, he should have asked for leave to file a supplemental answer, otherwise he might have a benefit which was never contemplated. If a man admitted by his answer a sum of money to be in his possession, and a portion of it was paid away after the answer was sworn, the court would receive an affidavit for the purpose of explaining the difference, but an affidavit could not be received directly to contradict the answer.

His Honour therefore made the usual order for production, and directed the costs relating to the affidavit to be paid by the defendant.

##### Queen's Bench.

(Before the Four Judges.)

In the matter of ——. Trinity Term, 1846.

#### PRACTICE.—ATTORNEY.

*In an application at petty sessions for an order in bastardy, an attorney acted as clerk to the magistrates, and as attorney to the person against whom the order was applied for. The case was adjourned, on the second hearing an order was made, but the witnesses were not re-sworn on this occasion. The attorney gave notice of appeal, and took the objection in the grounds of appeal, that there was no re-swearing of the wit-*

*neques.* The order was abandoned, and after payment of reasonable costs a second order was applied for, when the same attorney objected to the jurisdiction of the magistrates to make a second order, the former one being still in existence. The court granted a rule nisi, calling upon the attorney to show cause why he should not answer the matters in the affidavit.

On the 4th of April last an application was made for an order in bastardy, and on the 14th of the same month the case came on to be heard before the justices at petty sessions. When the case was called on —, an attorney, acted in the double capacity of clerk to the justices and as attorney for the person against whom the application was made. The hearing was adjourned, and when the case was concluded the magistrates decided upon making an order on the putative father. The attorney immediately gave a written notice of appeal on behalf of the putative father, and as clerk to the magistrates he allowed an error to be committed in the proceedings, namely, there was an omission to re-swear the witnesses on the second hearing of the case.

This objection was taken by the grounds of appeal put in by the attorney acting for and in behalf of the putative father, the consequence was, that the order was abandoned on the ground of irregularity. The party applying then proposed to treat the former order as void, and to proceed for a fresh order, and tendered reasonable costs. The attorney demanded 3*l.* before the second order could be applied for, and 30*s.* was ultimately paid for the costs. Then, when the second application was made, the same attorney took the objection, that the magistrates had no jurisdiction to entertain the application, on the ground that the former order was still in existence. These facts being disclosed on affidavit,

Mr. Pashley applied for a rule, calling upon the attorney to show cause why he should not answer the matter in the affidavit.

Rule nisi.

### Common Pleas.

*Ramball v. Unit.* Easter Term, 1846.

#### SERVICE OF WRIT OF SUMMONS.—WAIVER OF IRREGULARITY.

*Where the service of a writ of summons was made more than 200 yards from the boundary of the proper county, but at the time of such service the defendant said, he felt obliged to the party for serving him there, and that he would not fail to attend to it: Held, that the irregularity in the service had been waived.*

*Byles*, Serjeant, had in this case obtained, on behalf of the plaintiff, a rule nisi to set aside the service of the writ of summons, on the ground of an alleged irregularity. The place of business of the defendant, who was an attorney, was in Birmingham, in Warwickshire, in the writ of summons, however, he was described as being resident in Staffordshire, where

it was sworn he had a dwelling-house, as also, that his place of business in Birmingham was more than 200 yards from the boundary of Staffordshire. The affidavit further stated, that the writ of summons had been served on the defendant at his office in Birmingham, on which occasion the defendant said to the clerk who served it, that he was much obliged to him, the clerk, for having come to his office and not to his dwelling-house, and that he would not fail to attend to it.

*Talfourd*, Serjeant, in showing cause, submitted, that although an irregularity had taken place in the service of the writ, there had been a waiver. What the defendant had said when the writ was served on him, was quite enough to dispense with a service in Staffordshire, and the defendant therefore ought not now to be allowed to avail himself of that, as an irregularity.

*Byles*, Serjeant, contra. The irregularity is admitted, and what passed at the time of the service had no reference to it, so as to amount to a waiver. It does not appear that the defendant knew at that time of the existence of any such irregularity, and his expressions were nothing more than those of mere courtesy. There is nothing either to show that the defendant had any knowledge of the distance from the boundary line of the two counties.

*By the Court.* It is hardly possible to believe that Mr. Unit's mind, he being an attorney, was such a perfect blank as not to know the boundary between Warwickshire and Staffordshire, over which he must have repeatedly passed. This being so, he must be taken from what passed at the service to have accepted the writ, just as though it had been served in Staffordshire, and thereby to have waived any irregularity in that respect. The rule therefore must be discharged.

Rule discharged.

### Court of Bankruptcy.

*In re Maclean.* July 10, 1845.

#### NOTICE TO DISPUTE ADJUDICATION.

*In the absence of a party, against whom a fiat in bankruptcy issues, his attorney or solicitor may give notice of his intention to dispute the adjudication.*

A fiat in bankruptcy having issued, and a duplicate of the adjudication having been served at the last place of abode of Donald Maclean, under the 5 & 6 Vict. c. 122, s. 23; Messrs. Lawrance and Plews gave notice, in their own names, on behalf of the bankrupt, that it was intended to dispute the adjudication, and such notice was duly served upon the solicitor of the petitioning creditor, and the registrar of the court, pursuant to the rule of court.\* In the course of the examination of the witnesses called to prove the act of bankruptcy, it appeared that Mr. Maclean had left England, with the alleged intention of proceed-

\* General rules and orders. Nov. 12, 1842, r. 13.

ing to Italy, several days before the duplicate of adjudication was left at his residence, and that there was no reason to suppose he had any personal knowledge of the present proceedings.

Mr Cooke, on the part of the petitioning creditor, thereupon objected, that the notice to dispute the adjudication was insufficient, not having been given by the alleged bankrupt himself, or by any person expressly appointed by him for that purpose. The language of the rule of court was, that "if any person adjudged bankrupt intended to dispute such adjudication, such person shall cause notice of his intention so to do, to be served upon the petitioning creditor," &c. The rule contemplated as he contended, that the notice should be given by the alleged bankrupt himself. Here it did not appear that he was a party to the present opposition, nor did it even appear that Messrs. Lawrence & Plews were his ordinary solicitors. The act of disputing the adjudication might be prejudicial to Mr. Maclean.

Mr. Lawrence (for Mr. Maclean) admitted, that he was not the ordinary solicitor of the alleged bankrupt, but he had once been retained by him on an occasion similar to the present, and he was now retained by Mr. Iliffe, who was Mr. Maclean's solicitor generally, on behalf of that gentleman. It was physically impossible to communicate with Mr. Maclean early enough to receive his personal instructions before the notice was given, as by the combined operation of the statute and rule of court, notice must be given within three days after service of the duplicate of adjudication, and if notice might not be given, by a solicitor on the part of an alleged bankrupt, the latter, when he happened, as in this case, to be out of England, would be virtually deprived of the right to dispute the adjudication, although such right was conferred in express terms by the statute 5 & 6 Vict. c. 122, s. 23.

Mr. Iliffe having been sworn, and deposing that he acted ordinarily as the solicitor of Mr. Maclean, and that he had retained Mr. Lawrence in the present proceeding,

Mr. Commissioner Fane decided, that the notice was sufficient. *Qui facit per alium facit per se*, and the alleged bankrupt must be presumed in this case to be acting by his solicitor. Mr. Iliffe was the solicitor of the alleged bankrupt, and if he deputed another who was a solicitor of this court, and perhaps more conversant with the practice to act for him, it did not appear to be open to any well-founded objection. If Mr. Lawrence disputed the adjudication without the consent of the alleged bankrupt, he did so at his peril.

The examination of witnesses was then proceeded with, and the learned commissioner ultimately confirmed the adjudication, of which notice was subsequently given in the London Gazette.

## NOTES OF THE WEEK.

### EQUITY BAR.

We understand that Mr. Purton Cooper, Q. C., has attached himself to the Lord Chan-

cellor's court. We are glad of this, as it is fitting that the profession should be able to rely on the presence of leading counsel in this tribunal. We shall be glad to be made acquainted with other similar arrangements.

### LAW APPOINTMENTS AND PROMOTIONS.

Francis Stack Murphy, Esq. M. P., Serjeant at Law of the Northern Circuit, who was called to the bar by the Hon. Society of Lincoln's Inn, on the 25th Jan. 1833, has received a patent of precedence.

John Barnard Byles, Esq., Serjeant at Law, Recorder of Buckingham, who was called to the bar 18th Nov., 1831, by the Hon. Society of the Inner Temple, has received a patent of precedence.

Joseph Humphrey, Esq., the conveyancing counsel, who was called to the bar by the Hon. Society of Lincoln's Inn, on the 6th July, 1821, has been promoted to the rank of Queen's Counsel.

[In the last list of new Queen's counsel, consisting of Mr. Bacon, Mr. Walpole, and Mr. Rolt, the name of Mr. Willcock was by mistake included. The latter gentleman, we understand, has not yet been called within the bar.]

### LEGAL OBITUARY.

On the 19th instant, Daniel Wakefield, Esq., Q. C., aged 69. He was called to the bar by the Hon. Society of Lincoln's Inn, on the 2nd May, 1807.

On the 22nd inst., Samuel Dare, Esq., one of the Masters of the Court of Exchequer.

### MASTERS EXTRAORDINARY IN CHANCERY.

From June 23rd, to July 21st, 1846, both inclusive, with dates when gazetted.

Sweet, William, Bristol. June 30.  
Williamson, Samuel, jun., Walsall. July 7.

### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From June 23rd, to July 21st, 1846, both inclusive, with dates when gazetted.

Clarke, Frederick, and Frederick Solly Gosling, 21, Austin Friars, Attorneys and Solicitors. July 3.

Daniell, Edward, and Arthur Louis Laing, Colchester, Attorneys and Solicitors. July 10.

Hunt, William, Rowland Price, and John Harward, Stourbridge, Attorneys and Solicitors. June 23.

Jefferys, William, and Richard Bathurst, Faversham, Attorneys, Solicitors, and Conveyancers. July 7.

Paramore, Matthew, and Alfred Copp, Bridgwater, Attorneys and Solicitors. July 7.

Stevens, Nathaniel, and Samuel Fearon, 1, Gray's Inn Square, and 17, Flayder Street, Westminster, Attorneys and Solicitors. June 26.

### THE EDITOR'S LETTER BOX.

Our usual account of the "Progress of Bills in Parliament relating to the Law" has this week been included in the leading article.

The letters of "A Special Pleader" and "A Juvenile Subscriber" shall be attended to.

# The Legal Observer.

SATURDAY, AUGUST 1, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## THE SMALL DEBTS BILL.

THE Prime Minister having signified the intention of the new government to proceed with the bill for enlarging the Jurisdiction and Districts of the present Local Courts, it becomes necessary again to direct the attention of our brethren to the general scope of the measure. It is now nearly sixteen years since Lord Brougham, after succeeding in the abolition of the Welsh judicature, propounded his scheme of local courts. It was then proposed to try the experiment on two counties only, before extending it to others. The experience of the working of the numerous local courts which have been since established, has certainly not removed the objections to the departmental scheme, nor have the improvements in the central or metropolitan plan, (by the diminution of expense—the curtailment of pleadings—and the removal of unnecessary delay,) lessened the claims of the superior courts to the confidence of the public. It seems, however, that the late and the present government are bent upon making trial of this great change in the mode of administering justice throughout the country.

We must take the liberty of saying that the lawyers have not been very well treated by their friends. An “ignorant impatience” for *cheap law* has been encouraged, and the lawyers, in order to preserve the dominion of the superior courts (which they sincerely believe to be for the public good), have from time to time assented to various changes in the mode of proceeding and in the amount of their emoluments, in order to satisfy the clamour and render the establishment of new petty courts unnecessary.

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After all these concessions and sacrifices, further changes are still demanded. This we think is rather hard, and we are firmly persuaded that the evil will ultimately fall in a much higher degree upon the client than the lawyer. His cheap law will be dear injustice. His bill of costs may be less, but he will fall into hands that will not be satisfied with either large or small costs, but absorb the debt itself. Nevertheless, we must prepare ourselves for the change which appears to be inevitable, and bad as it may be, must give it a candid consideration.

The clauses principally relating to the jurisdiction of the proposed courts are the following:—

By the 46th section the court may take cognizance of all personal actions where the debt or damage claimed is not more than 20*l.*, excluding, however, actions in which questions of title to any hereditament, shall be involved, or in which the validity of any bequest or limitation under any will or settlement shall be disputed.

The 78th clause authorises any of the judges of the superior courts to order the removal of the action into any of the superior courts, if the debt or damage claimed exceeds 5*l.*, on such terms as to costs and security as the judge shall think fit.

Then by the 119th section, where the plaintiff dwells more than 20 miles from the defendant, or where the cause of action did not arise wholly, or in some material point, within the jurisdiction of the court where the defendant dwells or carries on his business, such action may be brought in any superior court as if the act had not been passed.

It must be admitted that if the legislature be determined to establish local courts, these latter modifications render the present measure much less objectionable than any that has hitherto been proposed. As

we pointed out last week, there are upwards of 100 courts of request or conscience, scattered over all parts of the country,—many of them extending to 5*l.* or 10*l.*, and some extending to 15*l.*, each comprehending a very large district. Perhaps, therefore, it may be better that a general measure should be passed for the purpose of putting these various tribunals on one uniform footing. Besides these courts of request, there are all the ancient county courts, and numerous borough and other courts, making in all a total of many hundreds.

The extension of the county courts will be thus far beneficial, as well to the profession as to the public, that attorneys will be entitled to conduct the proceedings and act as advocates therein. They are enabled to do so both in the present borough courts and the county courts, though not in the courts of request. The practical difficulty, however, will be to fix an amount of professional charge which on the one hand, from its moderation, will satisfy the demand for cheap law, and on the other will be worth the acceptance of respectable and intelligent men. If it should be too small, we apprehend that the administration of justice in these new courts will fall almost exclusively into the hands of an inferior class of practitioners,—of which there is a sufficient number already,—haunting market places, and living at public houses. We fear also that those persons will follow the court on its circuit: foment disputes, and largely increase every kind of petty litigation.

At present the expenses of the existing courts are paid by the fees received. If two or three hundred judges, clerks, and other officers are to be promoted from their present rank, or others appointed to this extended jurisdiction, the annual amount will be enormous; and we question whether the fees which must necessarily be very low (else the business had far better remain at Westminster Hall) will equal the expenditure. Then will come new applications for a still further extension of the jurisdiction, in order to increase the number, if not the amount of fees. Doubtless the Treasury will look to the financial part of the question, and in the meantime we proceed to the discussion which took place on the 28th instant.

The Lord Chancellor adopted the bill of the late government, with some mo-

difications, as to the extent of district,—number of judges,—and patronage,—the particulars of which are stated in the following speech of his lordship on moving the second reading of the bill:—

The Lord Chancellor said, the system proposed in the present bill had its origin in a report of the Law Commissioners made in 1833. Of those commissioners the present Chief Baron and Mr. Justice Wightman were two; and after an elaborate examination of the subject they recommended a scheme which was identically the scheme proposed by the present measure. In 1839, a bill was introduced into the House of Commons for the amendment of the law relating to the recovery of small debts. It was referred to a select committee, of which Sir J. Graham and Sir G. Grey were members. They approved of the scheme of 1833, and the bill as amended by the committee was adopted by the House of Commons; but the pressure of business prevented the measure from being proceeded with. In the commencement of 1842, he introduced a bill founded on the same principle, and intended to carry the same plan into effect. He was stopped by being informed that the government of that day had a measure in contemplation; and in June of that year a measure was accordingly brought in by his immediate predecessor. The bill passed their lordships' house and went to the House of Commons. From the pressure of business, that bill also was not prosecuted.

In June, of this present year, the bill to which their lordships' attention was now called was introduced by the noble duke lately president of her Majesty's council (the Duke of Buccleuch); and finding that it corresponded with the report of the commission of 1833, with the report of the committee of 1839, and with the various bills brought in by successive governments since that time, and knowing how much it was wanted by the country, and how anxiously it was looked for, and how many applications for local acts had been stopped by the expectation of a general measure, he (the Lord Chancellor) had thought it his duty notwithstanding the lateness of the session, to propose that this measure should be carried into effect. Having stated the origin of the bill he should very shortly describe its nature.

The county court was the court in which demands for a small amount were enforced so early as the reign of Edward I. Its jurisdiction was fixed at 40*s.*, equal to 20*l.* in the present day. The amount had never been altered, but the expense of prosecution, on the contrary, had been very much altered; the expense of recovering 40*s.* would now exceed 6*l.* The impossibility of proceeding in these ancient courts effectually had of late years led to many applications to parliament, for the purpose of facilitating the recovery of small debts. Courts of conscience or courts of request, as they were called, had been established. The parties who officiated there were commissioners ignorant of the law, and unfortunately not altogether unacquainted with the suitors.

Nothing could more distinctly show the strong pressure for establishing judicatories of this kind than the number of such courts which had obtained private acts; and those acts could not be obtained without considerable outlay, while the maintenance of the courts involved considerable expense. The number of these local courts which still existed exceeded 100. From 1801 to the present time 46 had been sanctioned. In 1839, 27 acts of parliament were passed for the establishment of local courts. These applications were principally made from the dense population of the manufacturing districts. The number of judges at present existing in these several courts he had not been able correctly to ascertain; because many of them had no judges at all. In some cases there were commissioners; in others the same judge presided over several courts in the same district. It was quite obvious that throughout the country some jurisdiction of the kind was required.

It was proposed that 20*l.* should be the amount over which such jurisdiction should extend. The superior courts were inapplicable to the recovery of small debts, and a case was made out for the interference of parliament. The bill proposed to give to her Majesty in council the power to divide the country into districts, for the purpose of establishing local courts. Of course, the districts in the midst of the manufacturing population would be smaller than those in the agricultural parts of the country. The object, however, was that the person having to recover a small debt should not be obliged to go further than *ten miles to obtain justice*. This, of course, would render a great number of districts necessary. It did not, however, follow that there would be comparatively a great number of judges.

He intended to propose an amendment to the bill as it stood, the effect of which would be that the *number of judges* of these courts should be adjusted to the wants of the neighbourhood, and that one judge should sit alternately at different courts, devoting to each as much time as was consistent with the amount of duty to be done. Thus justice would be administered in a short time, and the suitor, who was now compelled to wait months and even years before he could get a decision, would not be disposed to complain if he obtained a hearing for his case in a week or a fortnight. He was not at present able to state the number of judges that would be required under the arrangement, because it would depend on the number of districts; but there was already a large number of judges employed—that is to say, persons qualified to sit in such courts as judges, and their services would be included.

He proposed to make another alteration in the bill as it stood. It proposed that these judges should be appointed by the lord lieutenants of counties, who were not exactly the officers on whom parliament would be disposed to rely for such appointments, especially as the jurisdiction of these courts would often extend to important subjects. He rather thought that

the appointments should be made by the *Lord Chancellor or the Secretary of State*. The bill itself went the length of saying that on any vacancy occurring it should be filled by the Lord Chancellor. The general provisions of the bill were in accordance with the recommendations of the committee of the House of Commons which sat in 1839.

He wished, however, in asking their lordships to adopt the bill, to guard himself against being supposed to be of opinion that the law relating to bankruptcy and insolvency should be allowed to remain in its present shape.

The bill as last printed, preserves the concurrent jurisdiction of the superior courts where the plaintiff resides more than twenty miles from the defendant. We trust from the intimation, contained in this speech, that the distance will be reduced to ten miles, and this would really be matter of public convenience, for we have no doubt that where the distance is greater than ten miles, the expense will be less to send by the railroad to London for a writ, than to send along a cross-road to the county town.

The fees of office in the superior courts on debts under 20*l.*, should be greatly reduced. For instance, the fees on the writ should be 1*s.* instead of 5*s.*

## PROPERTY AND INCOME TAX.

### SUFFICIENCY OF A PLEA OF PAYMENT OF PROPERTY-TAX IN AN ACTION FOR RENT.

THE machinery for carrying the former Income and Property Tax Act (46 Geo. 3, c. 65.) into execution, has been adopted with slight variations in the recent act; but the interval which elapsed between the period when the tax ceased to be collected under the act of 1806, and its renewed imposition under the 5 & 6 Vict. c. 35, invests the cases determined under the existing act with much of the novelty and importance attaching to questions arising upon the construction of a new law of extensive operation, and containing numerous and complicated provisions. We propose, therefore, as the occasions arise, to direct attention to this class of cases, in the same manner as to those relating to the Stamp Acts, and other laws which are more peculiarly the subjects of professional interest.

The question as to the proper mode of taking advantage of a payment under the Property Tax Act, in an action by a landlord against his tenant, was incidentally discussed in a late case of *Franklin v. Car-*



ter,<sup>a</sup> in the Court of Common Pleas. The act 5 & 6 Vict. c. 35, s. 60, No. 4, reg. 9, provides, that the occupier of any lands, tenements, hereditaments, or heritages, being tenant of the same, and paying the said duties, shall deduct so much thereof in respect of the rent payable to the landlord for the time being, (all sums allowed by the commissioners being first deducted,) as a rate of 7d. for every 20s. thereof would by a just proportion amount unto; which deduction shall be made out of the first payment thereafter to be made on account of rent; and the tenant paying the said assessment shall be acquitted and discharged of so much money, as if the same had actually been paid unto the person to or from whom his rent shall have been due and payable." The plaintiff (Franklin) having brought his action in covenant for the recovery of four quarters' rent, the last quarter due in September 1844, under a lease, reserving 70l. a year, "free from all rates, taxes, charges, duties, and assessments;" the defendant pleaded as 2l. 0s. 10d. parcel of the rent claimed, that that sum was duly assessed on the premises in respect of the property thereof under the statute, and that before the commencement of the suit, he, the defendant, being the occupier and tenant, paid to the collector the said sum of 2l. 0s. 10d., and had never made any payment on account of rent since the payment of the 2l. 0s. 10d. To this plea there was a general demurrer, in support of which it was contended in argument, that although the clause above cited gives to the tenant who has paid property tax chargeable on the landlord, the right to deduct the amount on payment of the next rent, it did not entitle him to set it off in an action. On the part of the defendant it was answered that the recent property and income tax act, puts the payment of the property tax on the same footing as a payment to the superior landlord; and that the case of *Tinckler v. Prentice*,<sup>b</sup> (under the 46 Geo. 3, c. 65, s. 74,) was a distinct authority to show that a payment of property tax on account of the landlord, was the proper subject of a plea.

*Maule, J.*, in the course of the argument, observed, that the recent act seemed to provide what would be implied by law without such provision; and in regard to the question, whether money paid by a tenant on account of his landlord under that act,

may be set-off, or deducted in an action brought by the landlord for the recovery of rent, he said—"I think we may hold without unduly straining the words of the act, that the deduction may be claimed out of the next payment, though made, under legal process. It is too much to ask us to go out of our way to put an inconvenient construction upon the words of the act, when they are well susceptible of a meaning that is consistent with reason and justice. For these reasons I am of opinion, that the plea is a good answer as to 2l. 0s. 10d." And the other judges concurring in this view, there was a judgment for the defendant on this part of the case.

In a subsequent case of *Cumming v. Bedborough*, decided by the Court of Exchequer in the sittings after Hilary Term, 1846, where after payment of the property tax there was a compromise with the landlord, who consented to take less than was due for rent, and the tenant afterwards sought to recover the amount of the tax in assumpsit, for money paid to the use of the landlord, the court held, that the action would not lie. In that case it was observed by *Alderson, B.*, that the tax was on the land and not on the owner, and that the tenant did not stand in the position of one paying money for his landlord, but paying rent in advance to his landlord, who must allow it, the act providing a simple mode for securing the repayment, by giving the tenant the right of deducting the payment from his rent at the next settlement. It was also distinctly laid down, that the tenant can only claim the deduction for property tax paid by him, at the next settlement of rent with his landlord, and that if he omits to claim the deduction at the time and the landlord afterwards refuses to allow it, the tenant has no remedy. The collector does not receive the money from the tenant for the use of the landlord, and where the tenant declines to exercise the power which the law puts in his own hands by deducting the payment at the next settlement, it is to be considered in the nature of a voluntary payment, in respect of which the action for money paid to the use of another will not lie. Upon these grounds it was determined, that the plaintiff was not entitled to recover.

<sup>a</sup> 1 Com. Bench, 750.

<sup>b</sup> 4 Taunt. 549.

## NOTES ON EQUITY.

ACTS OF INFANTS ON COMING OF AGE.—  
HOW FAR RELIEVED AGAINST.

In the case of *Pierce v. Waring*,<sup>a</sup> before Lord Chancellor Hardwicke, on the 13th November, 1745, it appeared that Mr. Waring the guardian had, on his ward's coming of age, and on settling accounts, accepted a voluntary present from him of 3,000*l.* India stock, "for his many kindnesses and services." And that his "kindnesses and services" had in fact been real and substantial was clearly made out; for during minority the ward had not only lived with his guardian, but had had his horses, dogs, &c., quartered upon him, and all his visitors and friends were, moreover, entertained in the guardian's house when the young gentleman stood a candidate for Ludlow. Nay, more than all this, the ward himself in his lifetime was well contented with what he had done, and never disputed the propriety of his donation. But after his death, his representatives thought differently, and brought their bill to have the transaction opened up. There was upon that bill no proof adduced of imposition, further than a sort of suggestion by conjecture that the ward when he made the gift did not know the real value of the stock. Now what did Lord Hardwicke do upon this state of circumstances? He proceeded (as was the habit of his mind) upon a general principle. He did not go upon the probability that the ward had been ignorant of the value of the stock, or ignorant of what he was about; but upon the consideration that the thing done was dangerous as matter of example; upon which ground he said that he would "not endure a gift to be obtained under such circumstances on the coming of age." And so declaring his opinion on the question as one of public policy, he set the transaction aside. This case of *Pierce v. Waring*; therefore, is the forerunner of all the decisions and dicta to be found in our reports upon the subject. The principle of it was subsequently expounded and enforced by the same distinguished judge in the case of *Hylton v. Hylton*,<sup>b</sup> in 1754, where a gift of an annuity to a guardian by the ward soon after his coming of age was set aside on the same general grounds of public policy, his lordship observing, that

where a man acts as guardian for an infant, the court is extremely watchful to prevent that person taking any advantage immediately upon his ward's coming of age, and at the time of settling accounts, or delivering up the trust; because upon such occasions an undue advantage may be taken. And, therefore, the principle of the court is of the same nature as in the case of bonds obtained from young heirs. All depends upon public utility; and the court will not suffer such things to take place, though perhaps in a particular instance there may not be any actual unfairness.

In *Walker v. Simmons*,<sup>c</sup> Lord Eldon said the protection of the court would be extended to infants "after they had attained 21, until they had acquired all the information which might have been had in adult years."

Such being the settled rule of the court, we have only to observe that it will be applied in all those cases where it appears that the person receiving the bounty stands at the time of the gift *in loco parentis* to the donor. Thus in the late remarkable case of *Archer v. Hudson*,<sup>d</sup> before Lord Langdale, it appeared that a niece, two months after she came of age, and after her guardians had fully accounted to her, entered into a voluntary security for her uncle by whom she had been brought up, and who was considered by the court as *in loco parentis*. The transaction was set aside; the court holding that where such a transaction takes place between parent and child just after the child has attained 21, and prior to "complete emancipation," and without any benefit ensuing to the child, the presumption must be, that an undue influence has been exercised. His lordship, however, in pronouncing his decision guarded himself against being understood to debar generally all transactions between parent and child. "Nobody," he observed, "has ever asserted that there cannot be a pecuniary transaction between parent and child, the child being of age; but every body will affirm in this court, that if there be a pecuniary transaction between parent and child just after the latter attains the age of 21 years, without any benefit moving to the child, the presumption is, that an undue influence has been employed; and it is the business and duty of the party who endeavours to maintain such transaction to show that the presumption is adequately rebutted. The

<sup>a</sup> Cited in *Cray v. Mansfield*, 1 Ves. sen. 379.

<sup>b</sup> 2 Ves. sen. 543.

<sup>c</sup> 3 Swan. 69.

<sup>d</sup> 7 Beav. 551.

court does not interfere to prevent an act even of bounty between parent and child; but it will take care that the child is placed in such a position as will enable him to form an entirely free and unfettered judgment independent altogether of any sort of control."

#### STIPULATIONS BY A SOLICITOR WITH A RAILWAY COMPANY.

In the case of *Columbine v. Chichester*, (*Times*, July 13,) the Vice-Chancellor of England held, (overruling a demurrer,) that there was nothing illegal or improper in an agreement whereby the plaintiff had stipulated that in return for his services in collecting information respecting a proposed railway scheme he should have 1500 shares of the undertaking allowed to him gratuitously. The agreement also, as originally framed, contained a provision that he should be solicitor to the company, but that was subsequently abandoned; upon which his Honour remarked, that "when an agreement contained a thing which might vitiate it, and that thing was afterwards struck out, the agreement became unimpeachable." We do not, however, understand the learned judge to affirm it as a universal proposition, that such a stipulation must necessarily and under all circumstances be void.

#### NOTICES OF NEW BOOKS.

*A Treatise on the Practice of Committees of the House of Commons with reference especially to Private Bills.* By CHARLES FRERE, Esq., Barrister at Law, and one of the Clerks in the Office of the Chief Clerk of the House of Commons, Westminster. Bigg and Son. 1846. Pp. viii. 97.

THIS is a concise and very useful book for that somewhat large and still increasing class of practitioners engaged in parliamentary business relating to the various classes of private bills which now occupy so largely the time of the legislature and swell the size of the statute book. From the official position of Mr. Frere, the author, the information thus communicated may, of course, be fully relied on, both for its accuracy and completeness.

Mr. Frere fully explains the proceedings in committees in the House of Commons on private bills, and states the rules with respect to them which are sanctioned by

general concurrence and practice. In cases where no certain rule can be deduced from the practice, he has stated the rule which appears to be most expedient, accompanied by the reasons in favour of its adoption. He has also added references to the precedents which bear upon the subject.

In order to give a clear view of the subject, Mr. Frere has considered, in the first place, the duties of committees of the House of Commons generally; but it has not been his object to enter into details with respect to any committees other than those on private bills.

1. He treats of committees generally, and their duties on bills, whether public or private; and herein of the alteration of the preamble of a bill, and its being specially reported on. He also treats of special orders in case of inclosure, drainage, and railway bills. The committees are to proceed without unnecessary delay, and not to exceed the powers granted to them, nor to come to any abstract resolutions; special reports may, however, be made.

2. Our author next treats of the constitution of committees generally, public and private. Public bills are distinguished from private in the method of introducing them, and there are also demi-private bills. He next notices petitions for private bills, and petitions for leave to dispense with special orders which are referred to the standing order committee, and there is also a committee on divorce bills, the proceedings in which are severally explained.

3. The constitution of committees on private bills not being divorce bills is next considered, and the course of proceeding clearly explained.

Proceedings in committee on an *opposed private bill* are next treated of. The day of meeting is fixed by the committee of selection. The members are required to sign declarations; and the room is cleared for the appointment of the chairman. All the members of the committee are to be present at the appointment. The order of proceedings is then arranged. The matters referred to the committee are then considered. Petitions in favour of the measure are not referred. The bill is referred to the committee as printed; but a filled up copy is required to be deposited in the Private Bill Office. The parties are then called in, and the agents and counsel for the bill appear. The petitions are read; the agents appear and produce cer-

tificates, and must enter their appearances when the petitions are read.

Having thus far stated the course of proceeding, the learned author next enters on the *objections* to the bill. To entitle a petitioner to be heard in opposition he must have a due amount of *interest* in the measure.

"This would naturally be inferred even were not questions so constantly raised as to whether such interest were sufficient; if there could be any doubt about it the conclusion would be strengthened by the indirect evidence of the intention of the House in this respect afforded by the wording of Standing Order No. 9; where the House, for special reasons, desiring that any person should be allowed to oppose a petition on the ground of non-compliance with the Standing Orders, whether their interest be thereby affected or not, specially declare that, in this case, "*any parties shall be at liberty to appear and be heard*" on any petition complaining of such non-compliance; and have only recently added the condition 'that the party affected by the non-compliance be cognizant of and consent to the presentation of the petition.'

"It has also been implied, that a person's interest may be affected by the passing of a bill in some respects, and that yet he may not on that account have a *locus standi* to oppose the bill. To state an instance—a landowner might desire to oppose the passing of a railway bill, because it did not come near enough to him for his accommodation; his interest might be affected by its passing, inasmuch as it might render less probable the making a railway in the same direction, which would accommodate him better, but it might be considered that he had not sufficient interest to entitle him to be heard, except as a promoter of a competing line; and in other cases the apprehended injury might be so remote a contingency, as not to constitute a sufficient ground of opposition; and, as the cases must be very various, it must be left to the committees to decide in each case, whether the opposition be a *bona fide* opposition, and proceeding on substantial grounds, or not."

The parliamentary maxim, that "Competition is not a valid ground of objection," is next considered. This is a very important point, and we shall extract our author's remarks upon it.

"It has been held, that, in accordance with this maxim, (to take an instance,) a railway company has no *locus standi* before a committee on another railway bill, if the only injury it can complain of is the loss of traffic which it will suffer by the passing of such bill. In order, however, to reconcile the recent practice of the House with this as a *general maxim*, keeping in view the two senses above-mentioned of the words "grounds of objection" we must consider the latter sense to be here specially intended: "that competition is not such a

ground of objection as to be put forward as an argument for the rejection of a measure"—or; that injury to one party arising from competition shall not stand in the way of a *proved* public benefit; not so much "that competition is not a sufficient ground for permitting a party to oppose a measure"—or, to put in other words for the sake of distinction, "that competition is not a ground of objection, but may, under certain circumstances, be a ground of opposition." For, in sessions 1844 and 1845, competing lines of railway were referred to one and the same committee, in order that they might be heard in opposition to one another. Objections were taken to the counsel for one line cross-examining the witnesses of another on account of the lines *not being competing* in certain cases. Competition, in fact, was in these cases the ground of opposition. If two lines were allowed to oppose one another, whilst they put forth their claims to the exclusive traffic through a new district of country, it might fairly be considered that an established line would have not a less right to oppose a rival railway which proposed to interfere with its traffic; that it should be allowed an opportunity of showing that it sufficiently satisfied all the demands for accommodation in the districts proposed to be traversed, or to urge any other objections to the new line which might be proposed. It could not, in answer, be said, that the cases in which this course was adopted by parliament were peculiar, in that it was necessary that only one of the competing lines should be sanctioned, and the question to be tried was only which was the best (which, by the bye, would have been sanctioning the principle that competition was a *valid ground of objection*). This was not the case. Lines, classed as competing lines, were in some cases both sanctioned, and it was held that either one or both, or neither, might be sanctioned; and in many cases, they were no more identical than any new line would be identical with an existing railway the traffic of which it in any degree interfered with. Moreover, in 1844, in classing such railways as might be considered as competing in order to their being referred to a committee specially constituted, the House not only took the cases of those bills before them which competed *inter se*, but those which competed with existing lines of railway; and on a bill of the latter class being referred to a committee, the *existing competing line* appeared by petition and opposed the preamble on the "*ground of opposition*" that the railway would interfere with its traffic.

"It appears, therefore, that, although competition is not a valid ground of objection, it may, under certain circumstances, be a legitimate ground of opposition. But it must be borne in mind, that the instances above adduced have been consequent on special orders of the House made, not in consideration of the private interests involved; and that they afford no reason to suppose that competition would be considered a legitimate ground of opposition in any case in which public interests were not equally involved."

The objections which may be taken to a petition on the ground of informality are then noticed. Thus the petitioner cannot be heard if the petition was not presented three clear days before the day appointed for the first meeting of the committee, unless by special instruction.

Mr. Frere then describes the mode of conducting the case before the committee:—

The counsel for the bill opens the case, and calls witnesses; cross-examination of witnesses on estimate; re-examination; counsel sums up; petitioners heard; right of reply; rebutting evidence; evidence in contradiction; case, when may be stopped; when many petitioners, one general reply; course taken in certain circumstances; room cleared for decision on preamble; several questions may arise; order of proceeding; form of question; chairman does not vote, unless numbers equal; motion need not be seconded.

If preamble negatived, report to be made; if preamble agreed to, clauses to be proceeded with; order of proceeding; form of questions; parties to be prepared with their objections; how parties heard on clauses; question of reply considered; principles to be kept in view; how applied in the several cases; clauses may be postponed; question on manuscript clause, how put; amendments in bill, how far restricted; petition for additional provision; if line to be deviated beyond limits prescribed; alteration of plan, &c.; interest of parties not before committee not to be effected unless due notice given; petition may be presented at any time against new clauses or amendments; acts not recited cannot be amended; if amendments very numerous.

Powers given to divide a bill into two bills; to make provision by a separate bill; to consolidate two bills into one bill; question of report; if amendments merely verbal or literal; title of bill; marginal notes; if bill abandoned by promoters; time for report; last day for reports; bill may be re-committed either generally or for special purpose; proceedings in the several cases; power to send for persons, papers, and records, not given; process if a witness required.

Witnesses, orders with regard to; if misbehave; petitioner may be examined; if a member of the House of Commons required as a witness; if a peer of parliament; witnesses may claim expenses; cannot correct his evidence; quorum of committee; when committee deliberate, room to be cleared; members of the House when entitled to be present; whether all members of the committee present must vote; notice of prayers; on unopposed private bills.

The subject of *railway bills* is lastly considered, and the following are the heads under which it is treated:—

*Practice in session 1845; question whether*

all members present must vote, again considered; proceedings on groups, session 1845; petitioner against a bill heard, if petition presented three clear days before day appointed for bill to go into committee; if preamble of competing line negatived, promoters out of court; exception; bill thrown out on standing orders entertained as a project.

Resolutions agreed to by the House of Commons with reference to railway bills during the present session.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### MALICIOUS INJURIES.

9 & 10 VICT. c. 25.

An Act for preventing malicious injuries to persons and property by fire, or by explosive or destructive substances. — [26th June, 1846.]

*Persons maliciously blowing up dwelling houses, any one being therein, guilty of felony.*

—Whereas the unlawful and malicious destruction of buildings, and attempts to injure persons and property, by fire, or by gunpowder and other explosive or destructive substances, is not adequately punishable by law: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That whoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroy, throw down, or damage the whole or any part of any dwelling house, any person being therein, shall be guilty of felony.

2. *Or blowing up buildings with intent to murder, guilty of felony.*—And be it enacted, That whoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroy or damage any building with intent to murder any person, or whereby the life of any person shall be endangered, shall be guilty of felony.

3. *Or injuring persons by explosive substances, guilty of felony.*—And be it enacted, That whoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, burn, maim, disfigure, disable, or do any grievous bodily harm to any person, shall be guilty of felony.

4. *Or attempting to do bodily injury by sending, &c., explosive or dangerous substances, guilty of felony.*—And be it enacted, That whoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send or deliver to, or cause to be taken or received by, any person any explosive substance, or any other dangerous or noxious thing, or cast or throw at or upon or otherwise apply to any person any corrosive fluid or other destructive or explosive substance, with intent, in any of the cases aforesaid, to burn, maim, disfigure, or disable any person, or to do some

grievous bodily harm to any person; shall; although no bodily injury be effected, be guilty of felony.

5. *Punishment for felonies herein-before specified.*—And be it enacted, That whoever shall be convicted of any felony herein-before mentioned shall be liable, at the discretion of the court, to be transported beyond the seas for the term of his natural life, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years.

6. *Punishment for persons attempting to blow up buildings, &c.*—And be it enacted, That whoever shall unlawfully and maliciously place or throw in, into, upon, against, or near any building or vessel any gunpowder or other explosive substance with intent to do any bodily damage to any person, or to destroy or damage any building or vessel, or any machinery, working tools, fixtures, goods, or chattels, shall, whether or not any explosion take place, and whether or not any injury is effected to any person, or any damage to any building, vessel, machinery, working tools, fixtures, goods, or chattels, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fifteen years, or to be imprisoned for any term not exceeding two years.

7. *Punishment for persons attempting to set fire to buildings.*—And be it enacted, That whoever shall unlawfully and maliciously by any overt act attempt to set fire to any building, vessel, or mine, or to any stack or steer, or to any vegetable produce of such kind, and with such intent that if the offence were complete the offender would be guilty of felony, and liable to be transported beyond the seas for the term of his natural life, shall, although such building, vessel, mine, stack, steer, or vegetable produce be not actually set on fire, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fifteen years, or to be imprisoned for any term not exceeding two years.

8. *Punishment for persons manufacturing, &c., explosive substances for the purpose of committing offences against this act.*—And be it enacted, That whoever shall knowingly have in his possession, or make or manufacture, any gunpowder, explosive substance, or any dangerous or noxious thing, or any machine, engine, instrument, or thing, with intent by means thereof to commit, or for the purpose of enabling any other person to commit, any offence against this act, shall be guilty of a misdemeanor, and on conviction thereof shall be liable to be imprisoned for any term not exceeding two years.

9. *Male offenders under eighteen years of age convicted under this act may be publicly or privately whipped.*—And be it enacted, That every male person under the age of eighteen years who shall be convicted of any offence under this act, or who shall be convicted of feloniously setting fire to any building, vessel or

mine, or to any stack or steer, shall be liable, at the discretion of the court before which he shall be convicted, in addition to any other sentence which may be passed upon him, to be publicly or privately whipped in such manner and as often, not exceeding thrice, as the court shall direct.

10. *As to the punishment of accessories before and after the fact.*—And be it enacted, That in the case of every felony punishable under this act, every principal in the second degree and every accessory before the fact shall be punishable in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act shall, on conviction, be liable to be imprisoned for any term not exceeding two years.

11. *Persons convicted of offences for which imprisonment may be awarded, may be kept to hard labour, and in solitary confinement.*—And be it enacted, That where any person shall be convicted of any offence punishable under this act for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one calendar month at any one time, and not exceeding three calendar months in any one year, as to the court in its discretion shall seem meet.

12. *Justices may issue warrants for searching any house, &c., in which any explosive substance is suspected to be made or kept.*—Persons executing such warrant to have same power as given by 12 G. 3. c. 61.—And be it enacted, That any justice of the peace of any county, riding, division, liberty, borough, or place in which any gunpowder or other explosive, dangerous, or noxious substance is suspected to be made or kept for the purpose of being used in committing an offence under this act, upon reasonable cause assigned upon oath by any person or persons, may issue a warrant or warrants under his hand and seal for searching in the daytime any house, shop, cellar, yard, or other place, or any vessel, in which such gunpowder or other explosive, dangerous, or noxious substance is suspected to be made or kept for such purpose as aforesaid; and that every person acting in the execution of any such warrant shall have, for seizing, removing to proper places, and detaining all such gunpowder, explosive, dangerous, or noxious substance, found upon such search, which he shall have good cause to suspect to be intended to be used in committing an offence under this act, and the barrels, packages, and cases in which the same shall be, the same powers which are given to persons searching for unlawful quantities of gunpowder under the warrant of a justice by an act passed in the twelfth year of the reign of King George the third, intituled “An Act to regulate the making, keep-

ing, and carriage of Gunpowder within Great Britain, and to repeal the laws heretofore made for any of those purposes."

13. *Any person loitering at night suspected of felony under this act may be taken into custody without warrant.*—And be it enacted, That it shall be lawful for any constable or peace officer to take into custody, without a warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony under this act, and to detain such person until he can be brought before a justice of the peace to be dealt with according to law.

14. *But not to be detained after noon of the following day.*—Provided always, and be it enacted, That no such person having been so apprehended shall be detained after noon of the following day without being brought before a justice of the peace.

15. *Offences under this act not to be tried by justices, &c., at sessions.*—And be it enacted, That neither the justices of the peace acting in and for any county, riding, division, or liberty, nor the recorder of any borough, shall at any sessions of the peace, or at any adjournment thereof, try any person or persons for any offence under this act.

16. *Nothing in this act to affect powers of 5 & 6 W. 4, c. 39, and 4 G. 4, c. 64.*—And be it enacted, That nothing in this act contained shall be construed to extend to the alteration or repeal of any of the powers, provisions, or regulations contained in an act passed in the sixth year of the reign of his late Majesty, intituled "An Act for effecting greater Uniformity of Practice in the Government of the several Prisons in England and Wales, and for appointing Inspectors of Prisons in Great Britain," or in an act passed in the fourth year of the reign of King George the Fourth, intituled "An Act for consolidating and amending the Laws relating to the building, repairing and regulating of certain Gaols and Houses of Correction in England and Wales."

17. *As to offences committed within the Admiralty jurisdiction.*—And be it enacted, That where any felony punishable under this act shall be committed within the jurisdiction of the Admiralty of England or of Ireland, the same shall be dealt with, inquired of, tried, and determined in the same manner as any other felony committed within that jurisdiction.

18. *Not to extend to Scotland.*—And be it enacted, That nothing in this act contained shall extend to Scotland.

19. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

tendent of Convicts under Sentence of Transportation. [3rd July, 1846.]

5 G. 4, c. 84.—*So much of recited act as gives the custody, &c., of male offenders out of England to the superintendent in England, &c., repealed, and powers to be exercised by the governor in each colony.*—Whereas by an act passed in the fifth year of the reign of King George the Fourth, intituled "An Act for the Transportation of Offenders from Great Britain," it was enacted, that it should be lawful for his Majesty, by an order or orders in council, to declare his royal will and pleasure that male offenders convicted in Great Britain, and being under sentence or order of transportation, should be kept to labour either at land or on board any vessel, to be provided by his Majesty, within the limits of any port or harbour in any part of his Majesty's dominions out of England to be named in such order or orders in council, and provision was therein made for the custody of such offenders under the management of a superintendent to be appointed by his Majesty, and of an overseer also to be appointed by his Majesty, for every such vessel or other place of confinement: And whereas it is expedient that the custody and management of such offenders when so kept to labour out of England should be under the authority of the governor of that part of her Majesty's dominions: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That so much of the said act as gives the custody and management of any such male offenders out of England to the superintendent of convicts confined in England under sentence of transportation, shall be repealed; and that the governor of every colony named in any such order or orders in council shall be by virtue of his office the superintendent of such male offenders as shall be removed from Great Britain under sentence or order of transportation, and kept to labour in such colony under any such order or orders in council, and shall exercise all the powers and fulfil all the duties vested in and imposed on the said superintendent by the said act with respect to such offenders kept to labour in such colony, and that no other superintendent, nor any assistant or deputy to such superintendent, shall be appointed for any such colony under the said act; and that the overseer already appointed or hereafter to be appointed for any such colony under the said act shall exercise his authority and perform the duties required of him by the said act under the direction of the governor; and that every overseer hereafter to be appointed under the said act in any of her Majesty's colonies shall be appointed and may be suspended or dismissed by the governor of the colony for which he is appointed, subject in each case of appointment or dismissal to the approval of one of her Majesty's principal secretaries of state.

2. *Upon the next vacancy in the office of su-*

#### SUPERINTENDENCE OF CONVICTS.

9 & 10 VICT. c. 26.

An Act for abolishing the Office of Superin-

*perintendent of convicts, &c., the same shall be abolished.*—And be it enacted, That, upon the next vacancy in the office of superintendent of convicts in England under sentence or order of transportation, so much of the said act as provides for the appointment of such superintendent by her Majesty, or any overseer or any assistant or deputy to such superintendent, shall be repealed; and that all male offenders in England under sentence or order of transportation shall be thenceforth in the custody and management of such person or persons as shall be for that purpose appointed by one of her Majesty's principal secretaries of state; and the provisions of the first-recited act, not altered by this act, with respect to the superintendent and overseer having custody of any offenders under the said act, shall apply to the persons severally having the custody and management of such offenders under this act.

3. *Act to be construed with 5 G. 4, c. 84.*—And be it enacted, That this act shall be construed with and as part of the said act.

4. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

#### INCLOSURE OF LANDS.

9 VICT. c. 16.

An Act to authorize the Inclosure of certain Lands, in pursuance of the Recommendation

of the Inclosure Commissioners for England and Wales. [May 14, 1846.]

1. 8 & 9 Vict. c. 118. *Inclosures mentioned in the schedule to be proceeded with.*—Whereas the Inclosure Commissioners for England and Wales have, in pursuance of an act of the last session of parliament, intitled "An Act to facilitate the Inclosure and Improvement of Commons and Lands held in common, the Exchange of Lands, and the Division of intermixed Lands; to provide Remedies for defective or incomplete executions and for the Non-execution of the Powers of General and Local Inclosure Acts, and to provide for the Revival of such Powers in certain Cases," issued provisional orders for and concerning the several proposed inclosures mentioned in the schedule to this act, and have, in the annual general report of their proceedings, certified their opinion that such inclosures would be expedient; but the same cannot be proceeded with without the authority of parliament: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said several proposed inclosures mentioned in the schedule to this act be proceeded with.

2. *Short title of the act.*—And be it enacted, That in citing this act in other acts of parliament and in legal instruments it shall be sufficient to use the expression, "The Annual Inclosure Act, 1846."

#### SCHEDULE TO WHICH THIS ACT REFERS.

Inclosure.	County.	Date of Provisional Order.
Milten Common Fields . . . . .	Oxford . . . . .	1st January 1846.
Worsthorne Common . . . . .	Lancaster . . . . .	1st January 1846.
Newton Common . . . . .	Cambridge . . . . .	13th January 1846.
Instow Marsh . . . . .	Devon . . . . .	7th January 1846.
Arcley Common . . . . .	Worcester . . . . .	9th January 1846.
Salcomb and Northern Hill . . . . .	Devon . . . . .	7th January 1846.
Corley Moor . . . . .	Warwick . . . . .	7th January 1846.

#### ANNUAL REPORT OF THE INCORPORATED LAW SOCIETY.

At the annual general meeting of the members of the society, held in the Hall, on Tuesday, 12th May, 1846, Michael Clayton, Esq., in the chair; the following report of the council was read by the secretary:—

The council, in proceeding to state briefly the measures which have been adopted in the course of the past year in furtherance of the objects of the society, and the general management of its affairs, have first to notice the numerous projects for the *alteration of the Law* and the practice of the Courts, which have called for much attention on the part of the profession. The several bills which remained under the consideration of parliament at the time of the last annual meeting

were duly considered with reference to their operation and effect on professional practice. Amongst the measures then pending, and which were passed at the latter part of the session, were the acts for the Amendment of the Law of Real Property, 8 & 9 Vict. c. 106; the act for rendering the Assignment of satisfied Terms unnecessary, c. 112; the acts for facilitating the Conveyance of Real Property and the granting of Leases, c. 119 and 124; the Small Debts and Local Courts Act, c. 127; the Documentary Evidence Act, c. 113; the act relating to the Testamentary Disposition of Funds, c. 97; the act for facilitating the Administration of Justice in Chancery, c. 105; and the act for abolishing the Seal Office, c. 34.

There were also other bills before parliament which did not receive its sanction: namely,—



for the Consolidation of the Ecclesiastical Courts; for regulating Charitable Trusts; for amending the Law of Debtor and Creditor; for enabling the service abroad of Common Law Process; for amending the Law relating to Clerks of the Peace and Magistrates' Clerks; for admitting the Evidence of Parties in Civil Actions; for declaring the Rights of Parties in reference to future Claims, and various other measures.

All these bills received the attention of the council, and on many of them observations were submitted, and objections and suggestions made in the proper quarter. In the present session the council have also had under their consideration several bills already before parliament, namely, the bills for establishing a General Registry of Deeds; for regulating Charitable Trusts; for amending the Law of Bankruptcy and Insolvency; and several bills for establishing County Courts. These have already been under the consideration of several special committees, and the council will also bestow their best attention on the other bills which have been announced to be brought before parliament, relating to the short forms of Settlements, Mortgages, Leases, and other Deeds and Instruments in Conveyancing Practice.

The proposed change which was suggested last summer in the *time of holding the Circuits* and the consequent alteration of some of the *Terms*, was, by the direction of the Secretary of State for the Home Department, brought before the council, and the sentiments of a considerable number of the members of the society most interested in the subject, having been collected, the council were prepared to make several suggestions; but, owing to the lateness of the session when the measure was introduced, it was postponed, and the proposition has not yet been revived.

In furtherance of the suggested removal of the Courts from Palace Yard to the neighbourhood of the Inns of Court, the council presented a petition to the House of Commons; and the special committee of the house on that subject having been revived, further evidence was adduced, and the plan of a new site suggested, situate west of the Institution, and extending from Carey Street to the Strand. The evidence has been printed, accompanied by a map.

The council have received numerous complaints of *Mal-practice* of attorneys which they much lament, and to which they have paid due attention. They have also been informed of many unqualified persons acting as attorneys. In one of the instances of mal-practice, on an application to the society, the court struck the party off the roll; in several cases the council have been advised by their counsel that the evidence was insufficient; and in those cases they have not interfered; other complaints are still under consideration, particularly in regard to unqualified persons practising at the quarter sessions; and the council have pleasure in stating that the Court of Queen's Bench in the

course of last term decided the case of *Queen v. Buchanan* in favour of the views of the profession on this subject. The court said the defendant was indicted for practising as an attorney in conducting an appeal at the quarter sessions, namely, for practising in a manner which was forbidden by the second section of the recent act (6 & 7 Vict. c. 73). Disobedience to the act of parliament was an indictable offence. The demurrer having been overruled, the defendant applied for leave to plead to the indictment, but the court refused the application, saying, it was unreasonable where the act of parliament was very plain.

During the past year an application for readmission as an attorney by a recent member of the bar, and who had been disbarred for misconduct, was successfully resisted on the part of the society; and several cases for the renewal of the certificates of persons who had ceased to practise have been investigated, and such steps adopted as the circumstances of each rendered necessary.

Various *usages of the profession* have been under the consideration of the council; and, where any general usage could be ascertained, the result has been recorded in the usage book kept at the secretary's office, which is open to the inspection of every member of the society.

Connected with this subject, may be mentioned the difficulties lately raised in the office of the Registrar of Deeds in Middlesex, as to the party by whom the memorial should be executed; and, though the registrar has, for the present, modified the rule which he at first laid down, and the inconvenience occasioned by it has been diminished, there are still some questions which it is highly desirable should be finally settled; the council are directing their attention to that object, and they think it probable that it will be expedient to make an application to parliament to amend the Registry Act.

Amongst other matters of professional inconvenience which the council have been desirous of removing, were the delays which took place in passing accounts at the *Legacy Duty Office*. A memorial to the Commissioners of Stamps having been signed by many members of the society, the council addressed the commissioners on the subject, and an interview was appointed with the chief commissioner, which was attended by the president; and the council have the pleasure of reporting that the chief commissioner expressed on the part of the board the strongest desire to accommodate the profession in every respect, and to carry into effect a suggestion that the transaction of business might be considerably facilitated by a more extensive subdivision of the alphabetical arrangement of the books.

The subject of the *Gratuities of Counsel's Clerks* has been renewed, in consequence of a larger amount than is specified in the scale approved by the judges having been peremptorily retained by a clerk as a matter of right. Mr. Samuel Cotton, the solicitor in that case, petitioned the court, and conducted his case in

person; and, though the Master of the Rolls decided, as the council had anticipated, that he had no jurisdiction over a barrister's clerk, his Lordship expressed an opinion which will be satisfactory to the profession, viz.: that "clerks' fees can only be considered as gratuities, which the solicitor or party consulting counsel may pay or not at his own option; that there is no legal demand; but clerks' fees are usually by custom paid and are allowed on taxation to the amount mentioned in the scale approved by the Lord Chancellor and the other judges."

It appeared, on the hearing of Mr. Cotton's case, that a larger amount than that mentioned in the scale had been paid by some solicitors. The council therefore deem it advisable to send the fixed scale of gratuities, not only to all the members of the society, but to every London solicitor, at the same time urging them to give positive directions to their clerks not to exceed the scale in any case; and they trust that this resolution will be strictly adhered to, and thus prevent all future unpleasant disputes and discussions with counsel's clerks.

The tax on the profession of the *Annual Certificate Duty* has not been lost sight of, but the council have had no opportunity during the present session of parliament of bringing the subject prominently forward with any prospect of success. It will, however, still engage their attention, and they trust that ultimately this unjust burthen will be removed.

The council have continued their communications with the several provincial law societies on such matters as seemed requisite for the general interest of the profession.

Their attention having been called to a projected *Company for executing Trusts*, under wills and settlements, which was about to be chartered, the council directed a caveat to be entered, and a copy of the proposed charter to be obtained; but on ascertaining the terms of the charter, it was not deemed requisite to offer any opposition, and the caveat was withdrawn.

The *Examination* of candidates for admission has been conducted in the usual manner; but a smaller number of candidates have presented themselves during the past than in any former year: 346 were examined, and of these, 27 were not passed, thus reducing the number in four terms to 309.

The business of the *Annual Registration of Attorneys* proceeds satisfactorily; and it affords great facilities in ascertaining who are entitled to practise, and in checking to a considerable extent the encroachments of unqualified persons.

Under the authority of the Charter and Bye Laws, the council proceeded to settle the *Regulations* for conducting the business of the society in its various departments; and these regulations, with the Charter and Bye Laws, have been printed. They have also re-printed the rules and orders of court, and the recent acts relating to attorneys and solicitors; and the future rules and orders will be printed and circulated in the same form for the use of the members.

The *Lectures* have been continued, as heretofore, on conveyancing; on common law and criminal law; and on equity and bankruptcy; and have been well attended.

Additional purchases have been made to the *Library* to the amount of 311*l.* 19*s.* 6*d.*; and various donations of works have been received from their respective authors, and from several members of the society, a list of whom is in the library.

The *Accounts* for the past year have been examined by the auditors; and their report, which has been open for the inspection of the members since the 15th of April, will be submitted to the general meeting for approval.

Pursuant to the Bye Laws under the New Charter, the council have agreed to let the rooms, cellars, and premises occupied by the *Club* for the use of the members thereof, as tenants from year to year, subject to the rules and regulations submitted to and approved by the council, it being agreed that the council shall have power to determine the tenancy by giving six months notice.

Since the annual meeting on the 24th June last, 63 *New Members* have been elected, and after deducting the number retired, the society now consists of 1,363 members.

(Signed) MICHAEL CLAYTON,  
President.

The following resolutions were passed at the Annual General Meeting.

**RESOLVED**,—That Samuel Amory, Thomas Clarke, Richard Harrison, Bryan Holme, Edward Lawford, Robert Wheatley Lumley, Thomas Metcalfe, Charles Ranken, Charles Shadwell, and Richard White, be and they are hereby deemed and declared to be elected *Members of the Council*, in lieu of those who go out of office by rotation.

That Germain Lavie be and he is hereby deemed and declared to be elected a *Member of the Council*, in lieu of John Teesdale deceased.

That Edward Rowland Pickering be and he is hereby deemed and declared to be elected *President* of the society.

That Charles Ranken, be and he is hereby deemed and declared to be elected *Vice-president* of the society.

That James Leman, William Sharpe, and William Woodroffe, be and they are hereby deemed and declared to be elected *Auditors* of the accounts of the society.

Read the report of the council.

**RESOLVED**,—That the report be received and entered on the minutes.

That such parts of the report as the council think fit be printed for the use of the members.

Read the auditors' report of the accounts of the society from the 31st December, 1844, to 31st December, 1845.

**RESOLVED**,—That the auditors' report be approved and signed by the chairman.

**RESOLVED**,—That the best thanks of this meeting be offered to those members of the society who have so handsomely presented gra-

tuitously their shares in the property of the society, under the late charter.

(Signed) MICHAEL CLAYTON,  
President.

And **RESOLVED**,—That the cordial thanks of this meeting be presented to Mr. Clayton for his able conduct in the chair.

(Signed) R. MAUGHAM, Secretary.

The following are the council :—

*President*.—Mr. Edward Rowland Pickering.  
*Vice-president*.—Mr. Charles Ranken.

Mr. Samuel Amory, Mr. Benjamin Austen, Mr. Robert R. Bayley, Mr. Edward Smith Bigg, Mr. Thomas Clarke, Mr. Michael Clayton, Mr. John Coverdale, Mr. W. Loxham Farrer, Mr. John Irving Glennie, Mr. Alexander William Grant, Mr. John S. Gregory, Mr. Richard Harrison, Mr. Bryan Holme, Mr. George H. Kinderley, Mr. Germain Lavie, Mr. Edward Lawford, Mr. William Lowe, Mr. Robert W. Lumley, Mr. Thomas Metcalfe, Mr. Edward L. Pemberton, Mr. John Innes Pocock, Mr. Charles Shadwell, Mr. John J. J. Sudlow, Mr. William Tooke, Mr. Richard White, Mr. Robert Whitmore, Mr. Edward A. Wilde, Mr. Thomas Wing.

The following are the *Auditors* :

Mr. James Leman, Mr. William Sharpe, Mr. William Woodrooffe.

## VINDICATION OF PROFESSIONAL CHARGES.

OUR work has been long enough established to enable us to trace a remarkable change in the tone of the public journals in regard to the general body of the profession. Formerly the great bulk were supposed to be pettyfoggers and the respectable men the exceptions. Now it is admitted, that respectability is the rule, and pettyfogging the exception. *The Times*, notwithstanding its recent quarrel regarding certain resolutions on some of the circuits, (now happily adjusted,) has long done justice to the profession generally. And we are glad to extract from *The Morning Herald* of the 20th July, the following able and just remarks on legal practitioners and their charges :—

"The rebuke which Mr. *Stuart* administered on Friday\* to the noble member for Liverpool, relieves us from the necessity of saying more than a few words in vindication of the learned and powerful body who were assailed. A reflection is naturally suggested that a sneer at the practice and profession of the law ill becomes a member of a family that owes its greatness to the exertions of a successful lawyer,

somewhat more than a century ago; but we leave the personal matter in the hands of Mr. *Stuart*, who certainly did it all justice. To come, then, to the more important items. The descendant of Sir *Dudley Ryder* indulged in a vague and indefinite charge against the practice of the law, and in doing so adopted almost the terms that are employed in the *melo-drama*, where the villain of the piece is represented as a knavish attorney.

"This used to be once a highly popular strain, and was accordingly caught at with greediness by gentlemen who were either too indolent or incapable to think for themselves; but we much doubt whether prudence would now dictate the revival of this indefinite slander. At present no profession, we believe, binds together so closely the different grades of society as that which is recruited from among all—the profession of the law.

"The ground upon which the noble member for Liverpool rested his allegation was slender enough, as it seems to us, to suggest the propriety of a less confident tone than that he adopted. He had learned, it appeared, from some solicitor, who probably expected the job, that the cost of an unopposed petition to the Court of Chancery amounted to 70*l.*; but, with all respect to such authority, we venture to state that the expense of an unopposed petition, requiring no reference to the master, would be covered by about a fifth of that estimate.

"Oh, but suppose a reference is necessary, the proceedings are more costly. Likely enough; but let us examine into the cause of the increased expenses. There has been going on, say for a series of years, a breach of trust, and a petition is presented at length for the purpose of setting everything right. It of course becomes necessary to examine witnesses in order to obtain evidence sufficient for enabling the Court of Chancery to act; and these things unavoidably entail considerable expenses; but how is the law to blame? In an action at law witnesses are summoned frequently from a great distance, and boarded and lodged, sometimes for weeks together, at an enormous cost; but the law is not justly chargeable with these evils.

"It is easy for those who know as little of the actual state of the law as did the noble lord, until instructed by Mr. *Stuart* on Friday night, to inveigh against these expenses; but how, let us ask, can they be avoided, and at the same time justice be duly administered? The *Sultan*, indeed, would probably make short work of the matter, and might consign a defaulter trustee to the bow-string as the readiest mode of disentangling a complicated account; but we confess to the bad taste of preferring the English over the Ottoman practice, even were we not fortified by *Blackstone's* authority for the preference. The difficulty, in truth, of reducing law expenses, lies not in the machinery of the law, which is not, generally, costly, but in matters *dehors* the legal proceedings altogether. In England, for instance, where everything bears a comparatively high price, men's time

\* Reported in the paper of Saturday, 18th July.

and labour cannot be had for nothing; and hence the apparently heavy charges sanctioned by law. We here refer to what are strictly law expenses.

"One source of expense in Chancery, which is thrown upon unfortunate litigants for the benefit of the public, we hope to see speedily removed; and if the noble lord will address himself to that particular matter we promise him our hearty co-operation. We need scarcely say we refer to the *fees of court* which are levied upon suitors with a view of creating a fund for payment of a long list of sinecure offices with which judge after judge has burdened the country. This is, however, so far from being a tax imposed by law or lawyers, that we might almost say that they are in many ways the principal sufferers from the impost. All the *fees are paid in the first instance by the solicitor*, and necessarily make a considerable figure in his bill of costs, and are regarded as charges made by him. Neither can we understand the propriety of charging the public 300 per cent. on the sale of office copies, as is done ever since the late considerable reduction.

"We shall only add, that no more suitable vindicator could be found of the profession of which he is alike *decus et tutamen*, the strength and ornament, than the hon. member for Newark. Long distinguished in the Court of Chancery for a profound and scientific acquaintance with the law, and his singular amenity and courtesy of manner, Mr. *Stuart* is rapidly acquiring a parliamentary reputation that must shortly place him at the head of those members of his own profession in the House of Commons."

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Courts of Equity.

#### II. CONSTRUCTION OF WILLS.

[THE unusual length of that part of the Equity Digest which includes the *principles* of the Court, (see p. 291, *ante*,) rendered it convenient to separate the Decisions on the Construction of Wills and Statutes, and they are accordingly given in the present number. The cases on *Pleading and Practice* will come next in succession.]

#### ANNUITY.

A testatrix, being liable to pay an annuity to *A.* for life, purchased an annuity during *B.*'s life, and effected a policy on *B.*'s life for 2,000*l.* By her will she recited, that on the death of *B.* 2,000*l.* would be recovered to her estate. In the event of *B.* dying in the lifetime of *A.*, the executors were to provide *A.*'s annuity out of her estate. In the event of *A.*'s death before *B.*, she gave the purchased annuity to *C.*, he paying the premiums; and on the death of *B.* she gave to *C.* the 2,000*l.* *B.* died in the life-

time of *A.*: *Held*, that *C.* was not entitled to the 2,000*l.* *Leckie v. Hogben*, 7 Beav. 502.

#### APPOINTMENT.

**Power.**—Testatrix having a testamentary power of appointment in favour of her children, over certain sums of stock standing in the names of *A.* and *B.* as trustees, gave and bequeathed, and by virtue of every power enabling her in that behalf, appointed all the property of or to which she was then, or at the time of her death, should or might be possessed or entitled or have power to dispose, to *A.* and *B.* upon trust, after payment of her debts and funeral and testamentary expenses, to invest the residue thereof in their names, in the funds or upon government or real security; and she then declared trusts in favour of her children. She died possessed of personal estate more than sufficient to pay her debts and funeral and testamentary expenses: *Held*, that her will was not an exercise of the power. *Clogstoun v. Walcott*, 13 Sim. 523.

#### CHILDREN.

"*Family.*"—"Cash or monies so called."—A testatrix in her will used the following expression:—"Observing that *F. Beales* and his family are my residuary legatees for all but cash or monies so called." *F. Beales* had nine children living at the date of the will and at the testatrix's death, and the testatrix died possessed of a promissory note payable to herself or order, some long annuities, Columbian bonds, and money in her house and at her banker's. *Held*, that by "*Francis Beales and his family*," the testatrix meant *Francis Beales* and his children, and that they took the note, annuities, and bonds, as joint tenants, those articles being neither cash nor monies so called. *Beales v. Crisford*, 13 Sim. 592.

#### CONTRIBUTION.

A testator gave his farm of *A.* with the stock and one-third of his residuary property, to his grandson *X.*, and his farms of *B.* and *C.*, with the remaining two-thirds of the residue of his property, to his grandsons *Y.* and *Z.*, and bequeathed to his wife an annuity to be paid to her during her life by his said three grandsons, share and share alike. The farms of *A.*, *B.*, and *C.* were held under terminable leases, and the testator declared, that his said grandsons, or their heirs, "on the fall of any lease, were to be equal sufferers, pursuant to their respective proportions." The testator, at the time of making his will, and at the time of his death, was also seised for two lives of the farm of *Blackacre*, which passed under the will as part of his residuary property.

*Held*, that on the fall of the leases under which *A.*, *B.*, and *C.* were held, a purchaser of *Blackacre* would not be liable to a demand for contribution; for that the true construction of the clause, declaring that the grandsons were to be equal sufferers on the fall of any lease, was that which confined its operation to the leases specifically mentioned and devised by the will. *Spunner v. Dwyer*, 4 Dru. & War. 477.

Case cited in the judgment: *Doe v. Joinville*, 3 East, 172.

#### CONVERSION.

After a specific gift of certain leasehold houses to the testator's wife for her life, she paying the ground rents, and performing the covenants, with remainder over to his nephew, the testator bequeathed the "rents and profits, dividends and interest" of all the residue of his property to his wife for her life, with a gift over of the whole of the residue after her decease to other persons: *Held*, that the widow was not entitled to the enjoyment in specie during her life of that part of the residue which consisted of leasehold and other perishable property, but that the same ought to be converted. *Pickup v. Atkinson*, 4 Hare, 624.

Cases cited in the judgment: *Howe v. Lord Dartmouth*, 7 Ves. 138; *Hewes v. Hewes*, 3 Hare, 609; *Bethune v. Kennedy*, 1 M. & C. 114; *Collins v. Collins*, 2 Myl. & K. 703; *Pickering v. Pickering and Goodenough v. Tremamordo*, 2 Bea. 512.

#### DEVISE.

A. devised his estates to B., his son, for life; remainder to the first and other sons of B. in tail; remainder to his daughters as tenants in common; remainder to C., for life; remainder to D., the son of C., if living at C.'s death, for life; remainder to the first and other sons of D. in tail; remainder to the male heir for the time being entitled to a certain family estate; remainder to the first and other sons of such male heir, remainder to the testator's own right heirs, of his name; and he directed the residue of his personal estate to be laid out in lands to be conveyed to the same uses as his devised estates. B., his son and executor, did not lay out the personal estate as directed by the will; but by his will he directed that certain real and personal estate should be conveyed and assigned to the trustees under the will of A. upon the trusts of that will, or such of them as could then be executed; adding, that he deemed such property an equivalent in value for the residuum of his father's personal estate; and he directed that the same should be settled and accepted accordingly. The real and personal estate were not conveyed or assigned according to the will. On the death of B. without issue, C. entered into possession of the real estate devised by both wills, and the personal estate bequeathed by the will of B. At the death of C., D. entered into possession of the same real and personal estate. D. died without issue, and at his death there was no male heir entitled to the said family estate. *Held*, that the ultimate limitation in the will of A. to his right heirs, of his name, vested at his death, and not at the death of D.

That the co-heiresses at law of B. (or the parties claiming under them) were entitled to the real estate so devised by the wills of A. and B.

That, inasmuch as the estates were made equitable by the will of B., a court of equity might properly send a case to a court of law, to

try at the same time the right under the will of A., as well as under the will of B.

That the personal estate bequeathed by the will of B., though not actually converted, must be deemed to be converted into, and to have descended as, real estate. *Wrighton v. Macanlay*, 4 Hare, 487; S. C. 14 Mee. & Wels. 214.

Case cited in the judgment: *Lechmere v. Carlisle*, 3 P. Wms. 211.

#### ELECTION.

Testator, having contracted to sell part of his fee simple estates, devised all his real and personal estates to trustees, and directed them to complete his contract with the purchaser, and to sell and convert into money all his real and personal estates, and out of the interest of the moneys to arise from the sales, to pay an annuity to his wife for her life; and he empowered his trustees to lease such parts of his real estate as should not be sold. *Held*, that the widow was bound to elect between the benefits given her by the will and her dower. *O'Hara v. Chaine*, 1 Jones & L. 662.

Case cited in the judgment: *Hall v. Hill*, 1 D. & War. 94.

#### ESTATE FOR LIFE.

Devise to A. for life, with remainder to her first child and his or her heirs; but if such child should die under the age of 21 years without leaving issue, then in like manner to the second, third, and every other child of A., regard being had to their seniority, and to their respective deaths under age without leaving lawful issue; for, in case of issue, it was the testator's will that they should inherit the estate, and he thereby gave the same to him or her, and to his or heirs accordingly. But in case A. died without leaving issue of her body, or, having such issue, such issue should die under the age of 21 without leaving issue, then he devised the estate over.

A. never had any issue. *Held*, that she took a life estate only. *Goymour v. Pigge*, 7 Bea. 475.

#### LEGACY.

A testator gave a surplus fund, constituted of the accumulation of certain rents issuing out of freehold estates, to be divided in equal parts amongst all his children living at his death.

By a codicil the testator revoked the gift to W., one of the children. *Held*, that the share which had been given by the will to W. belonged to the other children, and did not devolve to the heir at law and next of kin of the testator.

The case of *Cresswell v. Cheslyn*, 2 Eden, 123, 3 Bro. P. C. 246, Toml. ed., was well decided. *Shaw v. McMahon*, 4 Dru. & War. 431.

#### MONEY.

Testator directed that his debts and all charges and incumbrances affecting his estates be paid by the application, in the first instance, of all ready money and securities for money which he should die possessed of; and he charged his estates of C. exclusively with the

payment of such, if any, which should remain after such application. He devised his real estate to trustees and their heirs, as to the residue thereof not disposed of (which included C.) to the use of his wife for her life; and he bequeathed to her, in case she should survive him, all his personal property not before bequeathed. He then bequeathed a legacy, payable immediately after his decease; and gave, devised, and bequeathed, after the decease of his wife, two other legacies; and appointed his wife executrix. *Held*, 1. That the legacies were not charged on the lands of C. 2. That money of the testator, which, at his death, was in the hands of a salesmaster in Smithfield, was not ready money within the meaning of the will. *Smith v. Butler*, 1 J. & L. 692.

Case cited in the judgment: *Hassell v. Hassell*, 2 Dick. 527.

#### "NEAREST OF KIN."

Testator directed one-half of the interest of his residue to be paid to his daughter and only child, and the other half to his wife, during their joint lives; and that, if his daughter survived her mother or married and left issue, then that the whole of the capital should be paid to her after his wife's death; but if she died first, without marrying or leaving issue, then that the trustees should accumulate the interest of the residue so far as it was not directed to be paid to his wife, and that on her death, one-half of the capital should be divided amongst his nearest of kin, and the other half amongst his wife's nearest of kin. The daughter was the testator's nearest of kin at his death. She died a spinster, before her mother. At the mother's death the testator's sister was his nearest of kin.

*Held*, that by "my nearest of kin," the testator meant his nearest of kin at his own death, and not at the death of his wife; and consequently the personal representative of his daughter, and not his sister, was entitled to one moiety of the residue. *Urquhart v. Urquhart*, 13 Sim. 613.

Cases cited in the judgment: *Jones v. Colbeck*, 8 Ves. 38; *Bird v. Wood*, 2 Sim. & Stu. 400. *Briden v. Hewlett*, 2 Myl. & Keen, 90; *Butler v. Bushnell*, 3 Myl. & Keen, 232; *Holloway v. Holloway*, 5 Ves. 399; *Elmsley v. Young*, 13 Sim. 321; 2 Myl. & K. 82.

#### PORCTIONS.

Testator bequeathed 10,000*l.* in trust for his son, *J. L. J.*, for life, remainder in trust for the children of *J. L. J.*, when and as they should attain 21, as tenants in common, and if any of them should die before their shares became payable, leaving issue, their shares to be paid to their issue; but, if any of them should die before their shares became payable, leaving no issue, their shares to be paid to the survivors at the same time as their original shares should become payable; and if *J. L. J.* should have no child, or having such, they should all die under age and without issue, then the trust fund to sink into the residue, which the testator gave to two of his other children.

*J. L. J.* had four children, all of whom attained 21. One of them died in his lifetime without issue.

*Held*, that "payable" meant "attain 21." and consequently, that one-fourth of the fund vested in the deceased child. *Jones v. Jones*, 13 Sim. 561.

#### RESIDUE.

Testatrix concluded her will as follows:—"My house in Trevor Square, I give to my brother as residuary legatee of my remaining property for the benefit of his children." *Held*, that the brother took the residue as well as the house, in trust for his children. *Inderwick v. Inderwick*, 13 Sim. 652.

#### RESIDUARY DEVISE.

*Trust to entail*.—A testator, who was seized in fee of three estates, devised one of them, called the Tempo Estate, to his daughter Letitia for life, with remainder to her issue in tail, and in default of such issue, to his nephew, Robert James, for life, with remainder to his issue in tail, with several remainders over; but leaving the ultimate reversion in fee undisposed of. He then devised the two remaining estates to his other daughter in strict settlement, but made no disposition of the ultimate reversions in fee. The testator was also seized of diverse freehold lands, and was possessed of considerable personal property; and after devising various parts of his freehold lands to different persons, and bequeathing some pecuniary legacies, he concluded with these words:—"I leave and bequeath the rest, residue, and remainder of my property, both freehold and personal, of whatsoever nature and kind I may die possessed of, to my brother Robert; and if my said brother Robert shall survive me, I request and desire that he shall convert all the personal property into fee simple property, and at his decease leave the same entailed on his son Robert James, in the same manner as I have myself entailed the Tempo estate."

*Held*, that the freehold estates, which passed under the residuary devise, as well as the residuary personal property, were within the trust to entail contained in the residuary devise.

*Held*, also, that this trust was to be executed by giving a life estate to Robert James, with remainder to his sons and daughters in tail, according to the limitations of the tempo estate. *Tennent v. Tennent*, 1 Dru. 161; 8 C. 1 *Jones & L.* 379.

#### RESULTING TRUST.

*Heir*.—Testator devised all his freehold estates to his most dutiful and respectful nephew *E. E.*, "upon the trusts and for the uses following;" but did not declare any use or trust, except as to one of his estates. *Held*, from the context of the will and a codicil thereto, that there was no resulting trust in favour of his son and heir, as to any part of his estates. *Hughes v. Evans*, 13 Sim. 496.

## SURVIVORSHIP.

Devise and bequest of real and personal estate to trustees, upon trust (subject to certain legacies and annuities) for *A.* for life, and after his decease upon trust to convey, assure, and pay the whole of the said real and personal estate to and amongst the children of *A.* and the issue of any such children. But, in case *A.* should die without issue, then to pay and distribute the same equally amongst all and every the children of *B.* and *C.*, and the survivors of them; but in case any of such children should be then dead, leaving issue of his, her, or their body or bodies lawfully begotten, then such issue to have as well such original share or shares as the father or mother of such issue so dying would have been entitled to, if then living, as also such other share or shares thereof as the father or mother of such issue so dying might have been entitled to by survivorship or otherwise. *A.* survived the testator, and died without issue. Held, that the period of the survivorship of the children of *B.* and *C.* is not to be referred to the time of the death of the testator, but to that of the death of *A.* being the period of distribution; and that the children of *B.* and *C.* living at the date of the will, and those born after that date and before the death of *A.* were entitled to the real and personal estate, with survivorship between them in case of the death of any of such children without issue before the death of *A.*, the children of such of the said children as died before *A.* leaving issue, being substituted for original legatees. *Buckle v. Fawcett*, 4 Hare, 536.

Cases cited in the judgment: *Forth v. Chapman*, 1 P. Wms. 663; *Brograve v. Winder*, 2 Ves. jan. 634.

## VESTED INTEREST.

*Chattels real.*—*Legacy.*—A testator, who was seized of a freehold estate, and was also possessed of a term for years, with a *toties quoties* covenant for renewal, bequeathed to his daughter a legacy of 600*l.* charged both upon the freehold estate, and the term for years, and directed same to be paid to her on her attaining the age of 21 years, or day of marriage, whichever should first happen, with interest from the day of his death. Held, that this legacy, so far as it was charged upon the term for years, was vested, and that, consequently, upon the death of the legatee, intestate, before she attained the age of 21 years, and without having been married, it became divisible in equal shares among her next of kin. *In re Hudsons, minors*, 1 Dru. 6.

## III. CONSTRUCTION OF STATUTES.

[The cases in equity on the construction of statutes are not so numerous as in the courts of common law; but it has been found convenient to separate them on this occasion from the other equity decisions.]

## CORPORATION.

*Promissory note.*—The corporation of Lich-

field, constituted under the Municipal Corporation Act, 5 & 6 W. 4, s. 76, borrowed 200*l.* of *M.* to enable them to pay *L.*, their then treasurer, sums which he had paid to creditors of the old corporation, and gave *M.* their promissory note for the 200*l.* They did not, however, pay over that sum to *L.*, but suffered him to receive their then accruing income in reduction of what was due to him, and applied the 200*l.* to purposes to which the income would otherwise have been applicable. Held, that the corporation had no authority to give the promissory note, as it was not given to secure a debt due prior to the passing of the 5 & 6 W. 4, c. 76. *The Attorney-General v. The Corporation of Lichfield*, 13 Sim. 547.

## COPYHOLDS.

A court of equity might enforce the specific performance of an agreement between joint tenants of a copyhold estate to divide the land and hold the respective parts in severalty, and decree the parties to make mutual surrenders for that purpose, although, before the statute 4 & 5 W. 4, c. 35, the court had not jurisdiction, in a mere suit for partition, to decree the partition of copyholds. *Bolton v. Ward*, 4 Hare, 530.

Cases cited in the judgment: *Horneastle v. Charlesworth*, 11 Sim. 315; *Tope v. Morehead*, 6 Beav. 213; and see the authorities there cited.

## HEIR.

The 1 W. 4, c. 47, s. 12, does not apply to a case where an estate is devised to a trustee during the life of a *cestui que trust*, with remainders over; and by the disclaimer of the trustee the legal estate descends on the heir. *Heming v. Archer*, 7 Bea. 515.

## LIMITATIONS, STATUTE OF.

1. 3 & 4 W. 4, c. 27, s. 28.—*Mortgagor and mortgagee.*—*Acknowledgment of title.*—A mortgaged an estate to *B.* for 1,000 years. *B.* died, having bequeathed the mortgage to his widow. She also died; and in 1822, her personal representatives entered into and continued in possession of the estate until 1838, when they sold and assigned the mortgage to *C.*, who entered and continued in possession until 1843, when *A.*'s heir filed a bill to redeem, on the ground that the deed of assignment recited the mortgage and conveyed the term to *C.*, subject expressly to the equity of redemption of *A.* or his legal representatives. Held, that the deed was not such an acknowledgment of the mortgagor's title as to make the estate redeemable. *Lucas v. Dennison*, 13 Sim. 584.

2. *Tenancy for life.*—3 & 4 W. 4, c. 27.—A judgment creditor of a tenant in fee in remainder after an estate for life, is not entitled to recover out of the lands arrears of interest which accrued due during the existence of the tenancy for life, and more than 6 years before the commencement of the suit.

The prior incumbrance referred to in the exception in the 3 & 4 W. 4, c. 27, s. 42, is one which affects the estate or interest upon

which the subsequent incumbrance is also a charge. *Vincent v. Going*, 1 J. & L. 697.

#### MORTMAIN.

**Condition.**—A testator directed his charitable bequests to be paid out of his pure personalty, in priority of all other charges; and he devised his real and personal estate to trustees, upon trust to lay out the personal estate in real estate, and pay the rents, &c., to his wife for life; and he directed, that in case his wife's sister should reside with, or dwell in the house or place of residence of his said wife, or become part of her family, then, for every day of such residence, &c., his trustees should retain 100l. out of the rents, &c., payable to his wife, and pay the same to a charity. *Held*, first, that the condition was not illegal; secondly, that its effect being to divest a vested interest, it must be strictly construed; and thirdly, that as the benefit intended for the charity could not, in consequence of the Statute of Mortmain, take effect, the condition was void. *Ridgway v. Woodhouse*, 7 Bea. 437.

#### RESIDUARY LEGATEE.

**Devisee and executor.**—The Common Council of London being empowered by a local act of parliament to take a freehold house belonging to A., for the purposes of the act, at the expiration of six months after notice given of their intention to take the same, served A. with the required notice in September, 1840. The amount of the purchase money was afterwards agreed upon, and an abstract of A.'s title was sent to the Common Council. In April, 1841, he died, having, by his will, dated in 1837, devised his real estate to B., and his residuary personal estate to C. *Held*, that the purchase money, (which, after A.'s death, was paid into court under the act,) was to be considered not as part of his real, but as part of his personal estate; and that all his debts, &c., having been paid, it belonged to his residuary legatee. *In re The London Bridge Approaches Act* (2 & 3 Vict. c. 107, local); *Esparte Hawkins*, 13 Sim. 569.

Case cited in the judgment: *Sampson v. The University of Cambridge*, not reported.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Queen's Bench.

(Before the Four Judges.)

*The Queen v. The Justices of Denbighshire*,  
Trinity Term, 1846.

BARRISTERS.—ATTORNEYS.—EXCLUSIVE  
AUDIENCE AT SESSIONS.

*The court refused to grant a rule for a certiorari in order to bring up an order made by justices at quarter sessions, that exclusive audience should be granted to barristers*

*there at all times when four barristers were present.*

Sir F. Kelly, Solicitor-General, applied for a rule to show cause why a certiorari should not issue to the justices of Denbighshire, for the purpose of removing into this court an order made by them in January last, confirming a previous one made the 1st of July, 1845. It appeared from the affidavit of Mr. Evans, an attorney, that at the general quarter sessions held in and for the county of Denbigh, on the 1st of July, 1845, an order was made by the court, which was in the following terms:—"Ordered, that the request of the barristers for exclusive audience be granted at all times when four barristers are present. This order to take effect from the next quarter sessions inclusive." At the January quarter sessions, 1846, this order was reconsidered, reviewed, and confirmed by the justices. That, before the making of the first order, no barrister had even attended or practised at any court of quarter sessions in the said county, nor at any court of sessions in the principality of Wales, except on a special retainer, and that the attorneys and solicitors of the superior courts at Westminster, or, until the abolition of the special judicature of Wales, of the court of great sessions for the county of Denbigh, practising in the said court of quarter sessions, had at all times audience in the said court, and derived therefrom certain gains and emoluments. By virtue of the said order and confirmation thereof, certain members of the bar have since attended the quarter sessions, and have claimed and been permitted to have exclusive audience as advocates, and audience has been refused by the said court to Mr. Evans and several other attorneys of the superior courts at Westminster, practising in the court of quarter sessions at Denbigh, to whom the making of the said order has caused considerable pecuniary loss.

It was contended that, although the justices might have power to regulate their own proceedings, still such a rule would cause great hardship, more particular to the poorer suitors, who would be obliged to incur the greater expense of employing counsel instead of attorneys according to the ancient usage of the court. In *Collier v. Hicks*,\* Lord Tenterden, C. J., refers to the inconvenience felt from the want of regular attendance of barristers at remote places, and the heavy and ruinous expense likely to ensue; and *Parke, J.*, says, "No person has a right to act as an advocate without the leave of the court, which must of necessity have the power of regulating its own proceedings in all cases where they are not already regulated by ancient usage."

Lord Denman, C. J. I think the rule is most important, that all courts of justice should regulate their own proceedings. The exception to the rule, arising from occasions of ancient usage, as stated by my brother Parke,

\* 2 Barn. & Adol. 663.



does not appear to me to apply to such a case as the present, of different classes of the profession claiming to be heard. I think the rule in this case is a very beneficial one. The argument in favour of admitting attorneys to be heard instead of barristers on account of the expense as to costs, would apply equally to persons who would work for less charges than attorneys. It would apply to this court as well as to others; in fact, it would be equally just in all cases whatsoever. We frequently sit here to try causes which are of small amount, but that of itself is no reason why attorneys, or persons who would accept even smaller remuneration, should be entitled to audience as members of the higher branch of the profession are. I think it is quite necessary for the interest of all that there should be an order,—a privileged order, in courts of justice, and that we should not interfere with the discretion of the sessions in laying down this rule in the exercise of its undoubted power of regulating its own practice. If no barristers attended the sessions, it would be a different thing, but here they do. The discretion has been exercised here under some limitation; that is, that unless there shall be a sufficient number of barristers present, attorneys shall be heard. If, instead of the limit being four, the sessions had said sixty, the reason now relied on of expense would have been equally valid; for a poor man would find equal difficulty in employing a barrister out of the greater number as out of the lesser. The reason is not sufficient to satisfy me that this order should be quashed; and I am therefore of opinion that this rule ought not to be granted.

*Patteson, J.*, concurred.

Rule refused.

#### Queen's Bench Practice Court.

*Griffiths v. Thomas.* May 5th, June 12th.

**COSTS.**—STAT. 3 & 4 VICT. 24, WHEN INAPPLICABLE IN CASE OF ARBITRATION.

*An action on the case for the disturbance of a watercourse was, after issues joined upon not guilty, and pleas denying the plaintiff's right, but before trial, referred by a judge's order to arbitration, the costs of the suit to abide the event of the award. The arbitrator found all the issues for the plaintiff, but assessed the damages under 40s. Upon taxation, the Master allowed the plaintiff full costs of suit.*

*Held, (upon motion to review the taxation,) that inasmuch as the statute 3 & 4 Vict. c. 24, was confined in terms to a recovery by the verdict of a jury, and as it did not appear by the order of reference that the parties contemplated bringing themselves within the provisions of that act, the plaintiff was entitled to full costs under the Statute of Gloucester, and consequently, that the taxation was correct.*

**CASE** for diverting a watercourse, in which

issue had been joined upon the plea of not guilty, and two others denying the plaintiff's right: Before trial the cause was referred by an order of Lord Denman, at chambers, the costs of the suit to abide the event of the award, and the arbitrator found all the issues for the plaintiff with 6d. damages on the first issue. The Master, upon taxation, having allowed the plaintiff his full costs—

In Michaelmas Term, 1845, *E. V. Williams* moved for and obtained a rule calling upon the plaintiff to show cause why the taxation should not be reviewed, upon the ground that, inasmuch as the damages had been assessed at a sum less than 40s., the plaintiff was not entitled to any costs of suit by reason of the stat. 3 & 4 Vict. c. 24, s. 2.

*Butt and Gray* now showed cause. Before the passing of the act 3 & 4 Vict. c. 24, s. 2, it is clear that the plaintiff would have been entitled to costs of suit under the Statute of Gloucester, 6 Ed. 1, c. 1, s. 2, for the action being an action on the case, was not within the stat. 22 & 23 Car. 2, c. 9. Now the plaintiff is in precisely the same situation as if the first mentioned act had not been passed, for its provisions are expressly confined to cases in which the plaintiff recovers "by a verdict of a jury." *Taylor v. Rolfe*, 6 Q. B. 337. Here the right to recover costs depends wholly upon agreement, and to recover them, the plaintiff's only remedy is upon the award. It is not at all likely that the recent statute was in view of the parties, for the submission contains no clause enabling the arbitrator to certify under it. *Swinglehurst v. Altham*, 3 T. R. 138, and *Ward v. Mallinder*, 5 East. 489, which will be relied on by the other side, are inapplicable, for in those cases the actions referred were clearly within the statute 22 & 23 Car. 2, c. 9; and it was merely decided that an arbitrator under a reference by order of *nisi prius*, had no power to certify for costs under that act, in the absence of an express clause in the order enabling him to do so. The Statute of Gloucester alone is applicable to this case, and then, as the costs are to abide "the event," and the event has turned out to be in favour of the plaintiff, he is entitled to full costs of suit.

*Martin and E. V. Williams* contra. Undoubtedly, as there is no verdict, the stat. 3 & 4 Vict. c. 4, s. 2, does not apply in terms; the whole question depends upon the construction of the submission. Now, by the submission, the costs of the suit are made to abide the event of the award; and it is submitted that these words by a series of decisions have been held to mean that the costs are to abide the legal event, or in other words, to go in the same way as they would have done if a verdict had been found by a jury in the terms, and to the same effect as the award. *Swinglehurst v. Altham*, particularly *Highnam v. Hassell*, cited in 3 T. R. 139; *Butler v. Grubbs*, cited in 3 T. R. 139; *Ward v. Mallinder*, 5 East. 489. The parties, then, must be supposed to be in the same situation as if a verdict had been returned, in which case the right to costs would

have been determined according to the statutes in force as to costs, and the damages being under 40s., without a certificate, the plaintiff would be entitled to no costs whatever.

*Cur. adv. vult.*

June 12. *Coleridge, J.* It is plain that the stat. 3 & 4 Vict. c. 24, s. 2, does not apply in terms, for the plaintiff does not recover his 6d. by the verdict of a jury. But it was contended, that as the parties must be taken to have contemplated the bringing themselves within the Statute of Gloucester, so must they also within the recent statute above-mentioned. There is some difficulty in supposing this, where the action was clearly brought, not for real damages, but to try a right, and yet no power was given to the arbitrator to certify to that effect. It seems to me that the true meaning of the submission is what its words import, that the costs, that is, the payment of costs, should follow the event, i. e., the legal event of the award; that he in whose favour the decision was should be paid by the other party the costs of the suit.

Rule discharged, without costs.

#### Common Pleas.

*Tenniswood v. Pattison.* Trinity Term, 1846.

COUNTY COURT JURISDICTION.—PROCEEDINGS VOID AFTER FREEHOLD PLEADED.

*Where in an action in the sheriff's county court the right of freehold is pleaded, the jurisdiction of the court no longer exists, and all subsequent proceedings become void, and this although the issue in the cause be joined solely on another question.*

THIS was a writ of error on a false judgment from the county court of the sheriff of Yorkshire. From the record of the court below it appeared, that the action was in replevin for, as the declaration alleged; taking the cattle, goods, and chattels, &c. of the plaintiff, in a certain place called "Bootham Stray." To this declaration the defendant made cognizance under a distress, as bailiff of the mayor, &c. of the city of York, because the said place in which, &c. was the close, soil, and freehold of the said mayor, &c., and the said cattle are their damage feasant. To this the plaintiff pleaded, denying that the defendant was the bailiff of the mayor, &c. of the city of York, and that as such he had taken the said cattle, *modo et forma*, and thereupon issue was joined. The record then further stated the finding of the jury in favour of the plaintiff and that they had assessed the damages at 5l., together with 1s. for costs, whereupon judgment was entered.

*Allen*, Serjeant, (*Rew* with him), in support of the writ of error. The pleadings in this case raised a question of title to land, and there-

fore the jurisdiction of the county court was taken away, and all the subsequent proceedings became null and void. In the case of *Cannon v. Smallwood*, 3 Lev. 204, there was a plea giving rise to the question of freehold, and the court said the county court had "no power after freehold pleaded to proceed in the cause, neither directly nor collaterally, and therefore the proceedings here after that was pleaded, were *coram non iudice* and void." Here the freehold was a question collaterally arising, although the finding of the jury was confined to the issue of bailiff or no bailiff, and therefore, it is submitted, the jurisdiction ceased.

*Channell*, Serjeant, for the defendant in error. The case of *Cannon v. Smallwood* put in issue distinctly a charge on the freehold, in which respect it differs from the present case. The record here shows that the defendant was a total stranger to the freehold.

*Allen*, Serjeant, was heard in reply.

*By the court.* The case of *Cannon v. Smallwood* is as nearly in point as could well be expected, and there, as well as here, the freehold arose only collaterally. The authority of that case, though perhaps rather startling at first, is supported in principle by a passage in Lord Coke's commentary upon the statute of Gloucester, to be found in the second Institute, 310, 311. He says, speaking of the sheriff's jurisdiction to try the pleas in trespass.—"Neither shall he hold plea of trespass for taking away of charters concerning inheritance or freehold, for it is a maxim in law, Quod placita concernentia chartas seu scripta liberum tentementum tangentia in aliquibus curiis quæ recordum non habent secundum legem et consuetudinem regni Angliæ sine brevi Regis placitari non debent." In the present case, therefore, the judgment of the county court was void, and the plaintiff in error is entitled to judgment.

Judgment for the plaintiff in error.

#### Exchequer.

*Law v. Thompson.* Trinity Term, 2nd June, 1846.

PARTICULARS OF DEMAND.—VARIANCE.

*In an action for work and labour, the particulars of demand stated that the plaintiff sought to recover 450l. for his services as clerk to the defendant, from October, 1837, to October, 1839, at the rate of 200l. per annum. At the trial the plaintiff claimed the money for commission on business done by the defendant. Held, a fatal variance, and that the plaintiffs could not recover under that particular.*

ASSUMPSIT for work and labour. Pleas *non assumpsit*. The particulars of demand delivered with the declaration were as follows:—"This action is brought to recover from the defendant the sum of 450l. claimed by the plaintiff for his services as clerk or manager to the defendant from the month of October, 1837, to the month of October, 1839, both inclusive."

\* This judgment was delivered by *Wightman, J.*, at the request of *Coleridge, J.*, who was absent during Trinity Term, on account of indisposition.

A summons was taken out before a judge for further and better particulars, when an order was made, and the following particulars delivered:—"This action is brought to recover from the defendant the sum of 450*l.* claimed by the plaintiff for his services as clerk or manager to the defendant from the month of October, 1837, to the month of October, 1839, both inclusive, at the rate of 200*l.* per annum."

At the trial it appeared that the plaintiff sought to recover for commission upon the amount of business done by the defendant as a banker, and for that purpose gave evidence, that in the first year the amount of business done was 30,000*l.*, and in the second year 90,000*l.* The learned judge was of opinion that, under the particulars delivered, the plaintiff could not set up any claim, except for salary at the rate of 200*l.* a year, and directed a verdict for the plaintiff, reserving leave for the defendant to move to enter a nonsuit, or for a new trial. A rule nisi having been obtained,

*Brown* showed cause. The defendant could not have been misled. A particular of demand is not to be construed too strictly; it is enough if it gives the notice of the nature of the plaintiff's claim, so as to enable defendant to meet it. "In a note to the case of *Hurst v. Watkins*, 1 Camb. 68, it is said that if the plaintiff's particular conveys the requisite information to the defendant, however inaccurately it be drawn up, it is sufficient." The authority cited is *Doy and others, assignees, &c., v. Bower*, Sittings after Hilary Term, 1806, where a wrong name was inserted in the particular. In the present case but one set of services has been performed by the plaintiff for the defendant, and he could not have supposed that the plaintiff was going for anything else. Where the plaintiffs, *spirit merchants*, inadvertently delivered a bill of particulars for goods sold in their trade of *brewers*, the court discharged a rule for a nonsuit, it appearing that the defendant had been neither surprised nor misled. *Zambirth and another v. Roff*, 8 Bing. 411.

*Jervis and Compton* in support of the rule. The case cited from Campbell's reports is not law. It is no criterion that the defendant has not made an affidavit that he was misled, for in most cases the defendant must be aware of what the contract was; but he ought to have a clear notice of what the plaintiff is going for. The defendant did not come to prove the real amount of commission, but to disprove the claim for salary.

*Pollock, C. B.* It appears to me that at the close of the plaintiff's case he ought to have been nonsuited. The particulars of demand set up a claim for salary, and the evidence adduced showed a claim for commission. There is a very substantial distinction between the cases. Commission is claimed for services not in the capacity of a clerk, but salary can only be due in respect of services as a clerk. In my opinion the defendant might easily have been misled. The rule will be absolute for a new trial on payment of costs.

*Alderson, B.* I am also of opinion that there is a variance between the particular and the evidence. The object of a particular is to give the defendant substantial information of what the plaintiff is going for. The cases cited have certainly gone to great lengths in supporting particulars, but there circumstances existed from which it appeared that the parties were not misled. A particular which would not mislead an acute attorney might mislead an obtuse defendant. The question is reduced to this, whether, upon all the circumstances being looked at, a reasonable man would be deceived by the form of the particular. That was the real ground of the decision in *Zambirth v. Roff*. Here the plaintiff by his first particular demands 450*l.*; the defendant then goes before a judge and says, "I do not know how the plaintiff means to ask 450*l.*," and the judge orders a better particular when the plaintiff says that he claims for his services as clerk at the rate of 200*l.* a year. When the case comes to be tried it turns out that the real demand is not for services as a clerk, but for commission. The defendant only comes to prove that he never made a bargain with the plaintiff for salary as a clerk.

*Roffe, B.* I am of the same opinion. There are many cases in which the particulars have been directly and positively wrong, and yet the courts have decided that under the particular circumstances they were not calculated to mislead. Those cases stand altogether on a different footing from the present, for here the defendant must have been totally at a loss to know what he was to come prepared to prove. Particulars of demand ought not to be scanned with the nicety of a special plea, but the present particulars are clearly calculated to mislead the defendant.

*Platt, B.*, concurred.

Rule absolute for a new trial on payment of costs.

### Bankruptcy.

*In re Litton.* July 16, 1846.

#### RESIDENCE OF INSOLVENT PETITIONER.

*To satisfy the requirements of the statute 7 & 8 Vict. c. 96, there must be a continuous residence within the district of the court, for twelve months next preceding the date of the petition.*

THE stat. 7 & 8 Vict. c. 96, s. 2, gives the form of a petition for protection from process, (Schedule A., No. 1.), and provides that if such petition shall not be in the form prescribed, such petition shall be discharged. The prescribed form of petition contains the following words:—"That your petitioner has resided twelve calendar months within the district of this honourable court, that is to say, [insert the places and periods of residence.]"

In the present case the petitioner had inserted his place of residence, from which it appeared that he resided within the district of this court for more than two years antecedent to

the month of November 1845, but in that month went to reside in France, and continued there for a space of fifteen weeks, and then returned to England, and had since resided within the district.

On the part of a creditor the objection was taken, that the petitioner had no *locus standi*, inasmuch as it appeared that he had not resided continuously within the district for twelve months next preceding the date of his petition. The 1st act. of the act provided, that a petition may be presented to any court, "within the district of which the petitioner shall have resided within twelve calendar months," &c., but the residence here referred to was a continuous residence, otherwise a party might petition in a district in which he only paid occasional visits, so that in the whole such visits extended over a space of twelve months. On the other hand it was argued, that the construction contended for would materially limit the operation of the act, and render its provisions inoperative as regarded any person who by reason of business or pleasure, or even for health, had quitted their residence for any period—even for so short a period as a week—during the twelve months next preceding an application to this court.

Mr. Commissioner Fane was of opinion, that upon the true construction of the act of parliament there must be a residence within the district of the court for twelve months next preceding the date of filing the petition. He was also of opinion, that the residence must be substantially a continuous residence. He did not mean to say that a short absence from the district for any purpose of business, or for health, or even for pleasure, with an intention of returning, would deprive a person of the right of petitioning; but here the petitioner went to reside in France for fifteen weeks, which was a considerable portion of the twelve months, and no explanation was given of the circumstances or of his motives for such a change of residence. Under those circumstances he came to the conclusion that he had no jurisdiction to entertain the petition, which must be dismissed, and the petitioner remanded to his former custody.

## NOTES OF THE WEEK.

### OPENING THE COURT OF COMMON PLEAS.

On Monday last, Mr. J. S. Wortley inquired of the Attorney-General in the House of Commons, whether the present government intended to open the Court of Common Pleas. He believed the late government had proposed a measure for that purpose with the sanction of the late Lord Chief Justice.

The Attorney-General said he had not been enabled to have a communication with the Lord Chancellor on the subject, but he believed it was the intention of his noble and learned friend, on the part of her Majesty's government, to propose a measure for opening the

Court of Common Pleas to the whole profession. He could not pledge himself that the measure would be passed this session, but he would do his best to have such a measure adopted.

### FUTURE SITTINGS OF THE COURT OF CHANCERY IN AUGUST.

The Lord Chancellor, upon taking his seat, on the 22nd July, said, that he would not interfere with the arrangements which had been made this year for the court to rise for the long vacation, but it must be understood that another year the court would continue to sit until what was formerly the usual time, unless the state of business justified an earlier adjournment.

Mr. Cooper inquired, for the information of the bar and solicitors, whether his lordship would hear appeals after the last seal?

The Lord Chancellor replied, that if the motions and petitions were disposed of on Friday or Saturday, which it was suggested was probable, he should then continue the appeals until the rising of the court.

### LEGAL OBITUARY.

July 23.—At Cirencester, James Hobson White, Esq., Solicitor. Admitted on the Roll, Trinity Term, 1831.

July 23.—Thomas Rhodes, of Davies Street, Berkeley Square. Admitted on the Roll, Easter Term, 1823.

July 24.—John Harman, of Chester Place, Kennington, Solicitor, aged 50. Admitted on the Roll of the Common Pleas, 12th Feb. 1820.

### POSTPONEMENT OF THE SHORT-FORM CONVEYANCE BILL.

We are glad to be enabled to state, on authority on which we can rely, that this bill has been withdrawn for the present session.

The General Registry Bill, no doubt, must also be postponed.

### PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

Royal Assents. (27th July, 1846.)

Corresponding Societies and Lecture Rooms

House of Lords.

### NEW BILLS.

Recovery of Small Debts and Demands in England.—In committee. See p. 305, *ante*.

Juvenile Offenders. In Committee. Marquis of Westminster.

General Registration of Deeds.—For 2nd reading. Lord Campbell.

Religious Opinions Relief.—Passed. Lord Lyndhurst.

Punishment for deterring Prosecutors' Writ-  
nesses, &c.—In Committee. Lord Denman.  
Game Laws. To be reported.  
Small Debt Courts :  
St. Austell. In Committee.  
Birkenhead. In Committee.  
Commons Enclosure. Commons Amend-  
ment to be considered.  
Tithe Act Amendment. For 2nd reading.

#### House of Commons.

##### NEW BILLS.

Bankruptcy and Insolvency.—Re-committed.  
See the bill, 31 L. O. 569. Mr. Hawes.  
Roman Catholics' Relief.—Re-committed.  
See the bill, p. 402, *ante*. Mr. Watson.  
Northampton Small Debts Court.  
Poor Removal.—Passed.  
Death by Accidents Compensation. In Com-  
mittee.  
Deodands Abolition.—In Committee.  
Total Abolition of the Punishment of Death.  
Mr. Ewart.  
County Rates. For 2nd reading.  
Commons Enclosure, No. 2. Passed.  
Duty on Books and Engravings. Passed.  
Insolvent Debtors Amendment Act. For 2nd  
reading.  
Recovery of Salvage. For 3rd reading.  
Drainage of Land. Re-committed.  
Opening the Common Pleas.

##### POSTPONED.

Charitable Trust Accounts.  
Real Property Conveyance. — See p. 327,  
*ante*.

#### THE EDITOR'S LETTER BOX.

A correspondent observes that, although we take considerable interest in the subject of codification, he does not recollect to have seen in our pages any allusion to the sentiments of the late Mr. J. W. Smith, stated at the end of the introduction to his *Compendium of Mercantile Law*. Mr. Smith was of opinion that the criminal law ought certainly to be codified, as also the whole of our remedial system, (formalities and actions); but that the codification of the law of real property would be *useless*, and that of the mercantile law positively *mischievous*. Anything from the pen of a man of so lucid and philosophical a mind must be worthy of attention, and we shall certainly find place in our columns for an early notice of Mr. Smith's views on this subject.

Amongst other advantages in the plan adopted in the *Analytical Digest*, our readers, (whether practitioners or students,) will observe, that instead of the old method of giving all the points decided in one alphabetical order, whether common law, equity, bankruptcy,

criminal, or ecclesiastical, they are now arranged in appropriate parts or sections. Thus, last week we gave all the cases bearing on the doctrines or *principles* of equity, and the effect of those decisions will be much better understood when so collected, than when scattered over a larger space, and intermingled with points of pleading, practice, evidence, &c.

This week we insert the Decisions on the *Construction of Statutes* and the *Construction of Wills*. Those on *Pleading* will follow next.

"A Juvenile Subscriber" states that A. is articulated to B. in the usual manner, except that the term is seven years instead of five, in the profession of an attorney and solicitor; but at the end of the articles there is a proviso to the effect that if B., the master "shall die or retire from practice after the expiration of five, but before the expiration of seven years, it shall not be necessary for A. to be assigned, or serve for the residue of the term, but that the same term, if not contrary to law, shall cease and be at an end to all intent and purpose as if the same had expired by effluxion of time." We are not aware that such a proviso is invalid or repugnant to the context of the articles; and think that a service for five years will be valid under the circumstances stated.

The remarks of "Tyro" on the non-cultivation of timber on copyhold property have been received.

The letter of one of the committee of the proposed Articled Clerks' Society shall be considered. The zeal of the writer for professional instruction and improvement is highly praiseworthy, and we shall fully notice his remarks and suggestions at the earliest opportunity. He will find, however, that the charter of the Law Society does not authorize the admission to the library of any other than "clerks serving under articles, or who have served their articles to *members of the society*." A copy of the charter is given in vol. 30, L. O., 477. See section 12, p. 479.

The non-appearance in our list for Michaelmas Term of the name or "Charles Tudor Steedman," is accounted for on his own statement. The notices were given after the usual time, but as the judge granted an order for receiving them *nunc pro tunc*, we presume there will be no difficulty in obtaining admission. The name, however, appears in the court list for the last day of Trinity, and not Michaelmas Term. Our correspondent had better inquire into this at the Master's office.

# The Legal Observer.

SATURDAY, AUGUST 8, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## THE LORD CHANCELLOR'S SPECIAL ARRANGEMENT AS TO PAYMENT OF RAILWAY DEPOSITS OUT OF COURT.

THE act 1 & 2 Vict. c. 117, which provides for the custody of deposits standing in the name of the Accountant-General of the Court of Chancery, to the credit of railway and other public companies, enacts, that such deposits shall be paid back to the parties entitled on the occurrence of any one of four distinct contingencies, viz.: 1st, in the event of the bill before parliament being withdrawn; 2ndly, of its being rejected; 3rdly, of its passing into law; and 4thly, supposing none of those three events to have taken place, then absolutely and under all circumstances, the money must be restored upon an application to the court for that purpose at the close of the session. The course of proceeding is prescribed by the act; directing, that on the occurrence of any one of these four contingencies, a petition may be presented in a summary way, *ex parte*, and on that petition an order will be made for payment of the money out of court.

The unprecedented magnitude of the railway deposits made at the commencement of the present session, in pursuance of the Standing Orders of Parliament, rendered it peculiarly desirable that all facilities should be furnished towards the re-issuing of these prodigious sums the moment the proper time should arrive for making the application, inasmuch as the locking up of capital is an injury to the public as well as an oppression to individuals.

Before money can be paid out of court certain forms have to be gone through. The Accountant General must execute

the order which the court by the act of parliament is required to pronounce. Without the co-operation of this functionary and his subordinates the order of the court will be nugatory. Now, one would have thought that, regard being had to the state of public business, the extension of the parliamentary session beyond the usual period, and above all, the vastness of the sums standing in the name of this officer, and which by the close of the session must be imperatively required by the public companies engaged in railway speculations, —we say it might have been expected, in reference to these considerations, that at such a period the Accountant General's office would be kept open till all demands upon it incident to the close of the session should admit of being satisfied. At all events, we should have hoped that the period of closing the Accountant General's office would have been appointed for a day somewhat later than usual, in consequence of the peculiar pressure of the present moment. This, we say, would have been but a reasonable expectation under the circumstances of the case. Our readers will therefore be not a little startled to find that the day fixed by the late Chancellor, Lord Lyndhurst, for closing the Accountant General's office is not later, but considerably earlier than any fixed for a similar purpose in former years; for not only does Lord Chancellor Lyndhurst, by his Order of 1st July, enjoin that the books of the Accountant General be closed “from the 15th of August to the 29th of October,” but he goes on to say, that “no purchase, sale, or transfer of stock be made by the said Accountant General, unless the order be left at his office on or before Friday the 7th of August;” and that “no order for the payment of money

out of court be received at the Accountant General's office after Monday, 10th August." We are satisfied that those who drew up this order and procured it from his lordship, omitted to bring under his attention the clauses of the act of parliament which gives a legal right to railway companies to get their money out of court on the occurrence of the contingencies to which we have adverted; a legal right which this order was calculated, in many instances, to defeat; for there are still several important railway bills which, although carried beyond all risk of parliamentary impediments, will not receive the royal assent until a period when it would be too late under Lord Lyndhurst's order to obtain either a transfer of stock or a payment of money out of court; so that if that order were allowed to stand, a very great private inconvenience and oppression would be the consequence, there being, we understand, at this time upwards of two millions of money locked up in the Bank of England in the shape of railway deposits.

In this situation a petition was presented to the V. C. of England last week on behalf of the Sheffield, Rotheram, and Goole Railway Company, stating, that "their deposits, amounting to upwards of 60,000*l* had been converted into exchequer bills; that their bill had passed the House of Commons and likewise the committee of the House of Lords, but that the Royal Assent was not anticipated till the 7th of August, when, under Lord Lyndhurst's order, it would be too late to obtain a transfer of the stock, though not too late to obtain a payment of the money out of court, if by any process the stock could be converted into cash in the meantime. The prayer of the petition therefore was, that the exchequer bills might be immediately sold and converted into cash, to continue vested in the Accountant General's name, subject to the future order of the court. Mr. Macqueen having stated the purport of the petition, his Honour stated his opinion, upon looking into the act, that he had not authority to grant what was asked, but that the application was a proper one to submit to the attention of the present Lord Chancellor. Accordingly, on the last day of the recent sittings the matter was brought under the attention of Lord Cottenham, who at once stated that he had given orders for an arrangement to be made whereby the Ac-

countant General's office would be kept open for the purpose of giving effect to the provisions of the act of parliament, and enabling railway and other public companies to get back their deposits at the close of the session, whatever might be the state of their parliamentary proceedings. This is an important arrangement, with which it were well that the profession should be thoroughly acquainted.

## THE LOCAL COURT BILL.

WITH THE ALTERATIONS OF THE PRESENT GOVERNMENT.

THIS bill is now pressed forward at a rapid rate: it has gone through the committee and is appointed to be read a third time, and will probably pass the Upper House before our day of publication. We shall briefly state the alterations made by the present government.

By the late bill the judges of the new courts were to be such barristers or attorneys as were on the 1st June judges or clerks of the existing courts specified in the schedules, (see pp. 213, 287, *ante*.)

By the amended bill the Lord Chancellor may appoint as many judges as may be needed, being barristers of 7 years, or a barrister or attorney appointed under the acts specified in the schedules. In the late bill it was provided that no attorney appointed under this act shall by himself or partner be concerned as attorney or agent in any proceeding in any court under the act. Now, he is also restricted from practising in any court of law or equity.

There are several new clauses in the amended bill, viz. :—

That the judges of the following courts acting on the 1st June last, are to be continued in office and appointed the first judge under this act :—

Courts of request for the cities of *Bath* and *Bristol*, and the boroughs of *Liverpool* and *Manchester*. S. 9.

Courts Baron of the manors of *Sheffield* and *Eccleshall*. S. 10.

County court of *Middlesex*. S. 11.

Court baron of the honor of *Pontefract*. S. 12.

Provision is also made for the lords of manors having rights of appointing judges and clerks under the acts mentioned in schedule D,—giving them the appointment to the next vacancy, subject to the approval of the Secretary of State. S. 13.

Neither in the former nor the present bill are attorneys rendered eligible to supply vacancies on the death, resignation, or

NEWSPAPER

Had the order of Lord Lyndhurst in the *Legal Observer* of the 18th July, p. 276.

removal of the present judges. By the late bill such vacancies were to be filled by barristers of three years, and by the new bill of seven years practice.

So in the appointment of a deputy in case of illness, such deputy in both bills is required to be a barrister of three years' practice.

There is a new clause authorizing the appointment of two clerks in populous districts. S. 21.

On the subject of the patronage conferred by the bill and the qualification of the judges to be elected, our learned contemporary, *The Law Magazine*, well observes:—

"Let the dispensers of these offices be the high-minded chiefs of the courts of Westminster, or the five judges who are to draw up the rules of proceeding; their appointments will satisfy the whole country, and not a murmur will escape the profession. Let competency thus adjudicated be the sole qualification for the office. Let both branches of the profession be open to the selection of the judges. Why exclude attorneys? There may be cases in which they will be the fittest persons to fill the office. Let these places be laid open to free and honourable competition,—the competition of merit. Having secured the highest competency and integrity in the electors, the rest may be safely left to them, and all classes of the profession ought to be freely eligible."

The clauses in this are the same as in the previous bill as to the power of a judge of the superior courts to order the action to be removed when above 5*l*., on such terms as he may think fit, (S. 83); and as to the concurrent jurisdiction of the superior courts where the plaintiff resides more than twenty miles from the defendant. S. 125.

There is also the same clause as in the previous bill, depriving a plaintiff of his costs if he recover less than 20*l*. in the superior court, unless the judge certify that the action was fit to be brought in the superior court. S. 126.

It is said that there is a general desire on the part of the public to establish these courts. If this be true, there will be no danger in leaving the option of resorting to the superior courts where the sum exceeds 5*l*.. Let, then, the jurisdiction clause be altered accordingly. In s. 67, "practising attorney" instead of "person." S. 84, "leave of the judge" should not be necessary.

## PRACTICE AT THE JUDGES' CHAMBERS.

### REFUSAL TO SIGN A BILL OF EXCEPTIONS.

A CIRCUMSTANCE of an unusual nature, and which has excited some curiosity amongst the profession, occurred at the judges' chambers during the last week. According to the report which appeared in the daily papers, Chief Baron *Pollock*, who is the vacation judge, and at present transacts the chamber business of all the courts of common law, in pursuance of an authority constantly exercised by the judges at chambers of late years, made an order setting aside a demurrer as frivolous. The party whose demurrer was thus summarily disposed of, thereupon, tendered to the Chief Baron a bill of exceptions formally prepared and engrossed, and requested his signature, in order that the matter might be discussed before a court of error. The Chief Baron, however, declined to sign the bill of exceptions, or even to peruse it with a view to seeing that the point which he had determined was correctly and regularly stated, upon the ground, that the application to sign a bill of exceptions upon a matter arising at chambers was wholly unprecedented and ought not to be entertained.

As the question may probably become the subject of judicial decision hereafter, it would be premature and opposed to our uniform practice to hazard any opinion upon its merits; but in adverting to the fact we may also direct attention to the statutes and rules of court upon which the question arises, and thereby afford our readers the materials for forming their own opinion, or at all events, better understanding the question whenever it comes to be discussed.

The practice of delivering frivolous, or as they were commonly called, *sham* demurrers for the purpose of delay, and to impede the plaintiff in his proceeding to judgment, was long a subject of well-founded complaint, but it does not appear that any direct measure was adopted by the courts to put an end to the abuse, until the rules of practice promulgated in the 4th year of the reign of his late Majesty William the 4th. The second of those rules,\* which are equally applicable to all

\* The Practice Rules, Hil. T. 4 Will. 4, are distinct from the Pleading Rules promulgated in the same Term. The latter were framed



the courts of common law, provided that, "In the margin of every demurrer, before it is signed by counsel, some matter of law intended to be argued shall be stated, and if any demurrer shall be delivered without such statement; or with a frivolous statement, it may be set aside as improper by the court or a judge, and leave may be given to sign judgment as for want of a plea." Under this regulation, a jurisdiction, the operation of which can scarcely fail to have been salutary, has been exercised by the judges in setting aside demurrers which are obviously frivolous; but it is to be feared that in the haste with which business is sometimes dispatched at the judges' chambers, the principle has sometimes been lost sight of, that it is only when the objection taken by a demurrer is clearly and beyond dispute not well founded and there is no ground for argument, that a judge should interfere summarily to set aside a demurrer and give leave to sign judgment as for want of a plea.<sup>b</sup> We have heard of some well-authenticated cases where this course was pursued in the first instance, but where, after discussion and consideration, the court not only refused to set aside the demurrer as frivolous, but gave judgment for the party demurring. It is clear, therefore, that the authority should be, as no doubt it generally is, exercised with great caution, the more especially if the party whose objection is thus summarily disposed of is deprived of the remedy by appeal to a court of error, which a party whose demurrer is overruled by the court upon argument, and judgment given for the adverse party, is unquestionably entitled to.

The difficulty of pointing out a mode of appeal against the decision of a judge at chambers at a period when the courts of law are not sitting, probably suggested the novel course lately adopted of tendering a bill of exceptions to a judge at chambers. Bills of exceptions, as our readers are aware, were not known to the common law, but were introduced by the 13 Edw. 1, c. 31, (Westminster 2nd.) It was provided by that statute, that "when one that is impleaded before any of the justices doth allege an exception praying that the justices will allow it, which if they will not

allow, if he that alleged the exception do write the same exception, and require that the justices will put their seals for a witness, the justices shall do so; and if one will not, another of the company shall. And if the king, upon complaint made of the justices, cause the record to come before him, and the same exception be not found in the roll, and the plaintiff show the exception written, with the seal of a justice put to it, the justice shall be commanded that he appear at a certain day, either to confess or deny his seal, and if the justice cannot deny his seal, they shall proceed to judgment according to the same exception, as it ought to be allowed or disallowed."

The statute appears to have been applicable originally to decisions upon pleadings only, which were at the time of its passing carried on *ore tenus*,<sup>c</sup> but it was afterwards extended to cases where a judge was supposed to have misdirected a jury, either at bar or at *nisi prius*, as to the effect of evidence. The statute is said to extend to inferior courts,<sup>d</sup> but it has been doubted whether it extends to criminal cases.<sup>e</sup>

Mr. Tidd, who has collected in his practice much learning on the subject of bills of exceptions, states,<sup>f</sup> that the mode of compelling a judge who refuses to sign a bill of exceptions is, to issue a writ grounded on the statute, containing a surmise of an exception taken and overruled, and commanding the justices, if it be so, that they put their seals, upon which, if it be returned *quod non ita est*, an action lies for a false return, and thereupon the surmise will be tried, and if found to be so, damages will be given.

The bill of exceptions, when sealed, is only made use of upon a writ of error, and it has been said that where a writ of error will not lie there can be no bill of exceptions.<sup>g</sup>

## REMUNERATION OF SOLICITORS.

### PRINCIPLES OF TAXATION.

THE following remarks of Lord Langdale in a recent case<sup>h</sup> are very important

under the express authority of the stat. 3 & 4 W. 4, c. 42, s. 1, and the former under the general authority of the courts to regulate their own practice, limited and directed by the stat. 11 Geo 4, & 1 Will. 4, c. 70 s. 11.

<sup>b</sup> See *Walker v. Catley*, 5 Dowl. 592.

<sup>c</sup> See *Bulkeley v. Butler*, 2 B. & C. 445.

<sup>d</sup> 2 Inst. 427.

<sup>e</sup> 1 Bac. Ab. 325; 6 Willems, 535, Bal. ni. pr. 316.

<sup>f</sup> 9th Ed. p. 862.

<sup>g</sup> 1 Blac. R. 679. Cowp. 501, *sed vide*, 2 Lev. 236.

<sup>h</sup> *Lucas v. Peacock*, 8 Beav. 1.

as landmarks to solicitors, and guides for taxing masters. There were petitions complaining of the taxation. His lordship said :—

“ These petitions involve one important point. If solicitors were always justly paid according to the real value of their services it would be right to say that they should be entitled to payment only for that which has been of real service to their clients; but we all know that in practice, and according to old established rules of taxation, solicitors are sometimes very ill paid, and in some cases are not paid at all for very important services rendered by them to their clients. I should be glad to see such rules of practice established as would secure to them a sufficient remuneration for all real services, and exclude them from all payment for services pretended or merely nominal and not real. The discovery and establishment of such rules would be of great importance to both solicitors and clients, whose real interests are the same; but in the meantime and while a solicitor is not entitled to any remuneration, or is allowed a very inadequate remuneration for real services, I should be slow to admit that he is to be deprived of any lawful fees which the established practice of the court warrants, on the notion that the business charged for might have been of no practical benefit.”

In the case in which his lordship threw out these striking observations, the parties in an administration suit having come to a compromise, agreed that the costs, charges, and expenses should be paid out of the fund as between solicitor and client; and the same were by an order of July, 1842, referred to the Master for taxation; and it appeared that Mr. Haverfield, solicitor for the plaintiff, had acted also as solicitor for two persons who were of unsound mind and were made defendants, but whose interests it was stated were identical with, or similar to, those of the plaintiffs. The taxing master, not contenting himself with his province of taxation, entered into the merits of the question in dispute, and delivered an opinion that some expenses incurred might have been avoided; holding in particular, that the two defendants to whom we have adverted ought not to have been made defendants, but co-plaintiffs. He therefore taxed off several important items; and, on the ground that Mr. Haverfield acted on both sides, he disallowed the costs of about 200 warrants, which had been taken out by

the plaintiffs in the Master's office and served on these two imbecile defendants

The Master of the Rolls, (after observing that upon an appeal from the taxing master the court could not condescend to investigate the items of a bill of costs in detail,) said he would communicate with the taxing master, and give judgment on a future day. On the 26th of March last, accordingly, his lordship delivered his opinion, in which, adverting to the circumstance of the taxing master having thought himself called upon to take into consideration the constitution of the suit, his lordship laid it down very clearly, “ that if it was intended to find fault with the constitution of the suit under the order of taxation made in pursuance of the compromise, it ought to have been stated to the other parties, in order that they might have had an opportunity of considering whether they would concur in the compromise upon those terms.” After making this important suggestion, which seems to have been totally overlooked by the taxing master, his lordship proceeded to dispose of the question raised as to the solicitor acting for both the plaintiffs and the two above-named defendants :—

“ The solicitor, although acting for the plaintiffs, was responsible for the defendants, and he was under the necessity upon every occasion of protecting their interests. How was he to be remunerated for that? I know not how that attention is to be remunerated, except by the allowance of these charges; inasmuch as the rules of taxation in this court have not yet been found which adapt the remuneration to the value of the services rendered. It is notorious that in numerous instances compensation for real services *bonâ fide* rendered is not given by paying for that *bonâ fide* service, but is alone obtained through payments to a considerable amount for services which are really of little or no value at all to the client. I regret this state of the practice. Many attempts have been made to find out a more satisfactory mode of remunerating solicitors, but none have yet been suggested.”

## NOTICES OF NEW BOOKS.

*A Treatise on Copyhold, Customary Freehold, and Ancient Demesne Tenure, with the jurisdiction of Courts Baron and Courts Leet; also an Appendix, containing Rules for Holding Customary Courts,*

*Courts Baron and Courts Leet, Forms of Court Rolls, Deputations, and Copyhold Assurances, and Extracts from the Relative Acts of Parliament.* By JOHN SCRIVEN, Serjeant-at-Law. 4th Edition. Embracing all the Authorities to the present period. By HENRY STALMAN, Esq., of the Inner Temple, Barrister-at-Law. In Two volumes. London, Butterworth, 1846. Pp. lxxiv., 1279.

MR. STALMAN truly observes, that the death of the author of this treatise was a loss to the profession, especially to that portion of it whose more immediate duty it is to be conversant with the law of copyhold property. Mr. Serjeant Scriven deservedly enjoyed the reputation of being the first copyhold authority of his day. The editor (who was one of his pupils) observes, that this high reputation was justly acquired, and he forms his opinion from the numerous cases having reference to copyhold property submitted to him for his advice, the notes of many of which have come into the editor's hands.

The Serjeant's third edition was published in 1834, and has been for some time out of print. Since that time several statutes were passed and cases decided, having reference to the subject of the treatise; and the late author, in Hilary Term, 1842, published a supplement to his treatise embracing all the authorities on the subjects of it, and the relative acts of parliament since the third edition, with additional precedents.

Mr. Stalman has incorporated that supplement into the present edition, together with some additional statutes and cases; and as the various alterations which the law of copyholds has undergone, are but of recent occurrence, he has thought it best not to withdraw any considerable portions of the original treatise from the present edition.

He has not deemed it necessary to give the forms of procedure framed by the Copyhold Commissioners under the Commutation and Enfranchisement Acts; 1st, because they are readily obtainable at the office of the commissioners; 2ndly, because he observes from the reports of the commissioners that they have had to deal with one solitary case only under the commutation clauses of the general act, and to which the forms of procedure chiefly relate; and 3rdly, because he understands it to be in the contemplation of the commissioners to obtain another act, the effect of which will

be to render some alterations in the present forms of procedure necessary.

The editor has, however, considered it useful to introduce, at the end of the Copyhold Commutation and Enfranchisement Acts, two papers which have been put forth by the copyhold commissioners, the one intitled the "Tables of Terms on which Enfranchisements may be made, with Suggestions for General Rules," with some preliminary observations; and the other, "Terms for Enfranchisements." So far as present experience has gone, Mr. Stalman observes, the commutation clauses of the act have proved all but a dead letter. What copyhold tenure seems to require is, not commutation which perpetuates, but enfranchisement which extinguishes the tenure.

Such are Mr. Stalman's views in preparing this 4th edition; and which it appears to us he has carefully and judiciously completed with much learning and ability. We are glad to see these standard works edited by competent writers, and their deserved reputation preserved and continued.

The following summary will show the general nature of the work, and the mode in which the contents are arranged:

The 1st Part occupies the first volume, and treats of—

1. The nature and properties of a manor.
  2. The antiquity of copyhold tenure; incidental qualities; statutes.
  3. The lord of the manor; the steward, &c.
  4. Surrender; surrender to will.
  5. Devise; election.
  6. Attendance.
  7. Fine.
  8. Services.
  9. The steward's fees.
  10. Guardianship.
  11. Trust estates.
  12. Trees and mines.
  13. Forfeiture.
  14. Ejectment.
  15. Customary plaints.
  16. Evidence; pleading; prescription—waste land—commonable rights, &c.
  17. Mandamus; aid of the courts of equity.
  18. Extinguishment; enfranchisement.
- The 2nd Part comprises—
19. Customary freeholds or privileged copyholds.
  20. Ancient demesne.
- The 3rd Part includes—
21. The jurisdiction of courts baron.

22. The jurisdiction of courts leet; present character and practice of the court leet.

To which is added an Appendix to the Copyholder; and an Appendix to the Treatise of Courts Baron and Courts Leet.

## NEW STATUTES, EFFECTING ALTERATIONS IN THE LAW.

### FRIENDLY SOCIETIES.

9 & 10 VICT. c. 27.

An Act to amend the Laws relating to Friendly Societies. [3rd July, 1846.]

4 & 5 W. 4, c. 40.—*Purposes for which societies may be formed under 10 G. 4, c. 56, and 4 & 5 W. 4, c. 40.*—Whereas by an act passed in the fifth year of the reign of his late Majesty, intituled “An Act to amend an Act of the tenth year of his late Majesty King George the Fourth, to consolidate and amend the Law relating to Friendly Societies,” it is enacted, that it shall and may be lawful for any number of persons in Great Britain and Ireland to form themselves into and establish a society, under the provisions of the said recited act, for the mutual relief and maintenance of all and every the members thereof, their wives, children, relations, or nominees, in sickness, infancy, advanced age, widowhood, or other natural state or contingency whereof the occurrence is susceptible of calculation by way of average, or for any other purpose which is not illegal: And whereas doubts have been entertained for what purposes a society may be established under the provisions of the said act, and it is expedient that such purposes be better defined: Be it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That a society may be established, under the provisions of the said acts, for any of the following purposes; (that is to say,)

1. For the lawful insurance of money to be paid on the death of the members to their husbands, wives, or children, kindred or nominees, or for defraying the expenses of the burial of the members, their husbands, wives, or children; provided that no persons under the age of six shall be allowed to become a member of such society, and that no insurance shall be effected on the life of any child under six years of age:
2. For the relief, maintenance, or endowment of the members, their husbands, wives, children, kindred, or nominees, in infancy, old age, sickness, widowhood, or any other natural state of which the probability may be calculated by way of average:
3. Toward making good any loss sustained by the members by fire, flood, or shipwreck, or by any contingency of which

the probability may be calculated by way of average, whereby they shall have sustained any loss or damage of their live or dead stock, or goods or stock in trade, or of the tools or implements of their trade or calling:

4. For the frugal investment of the savings of the members for better enabling them to purchase food, firing, clothes, or other necessaries, or the tools or implements of their trade or calling, or to provide for the education of their children or kindred, with or without the assistance of charitable donations: Provided always, that the shares in any such investment society shall not be transferable, and that the investment of each member shall accumulate or be employed for the sole benefit of the member investing, or the husband, wife, children, or kindred of such member, and that no part thereof shall be appropriated to the relief, maintenance, or endowment of any other member or person whomsoever, and that the full amount of the balance due according to the rules of such society to each member shall be paid to him or her on withdrawing from the society, and that no such last-mentioned society shall be entitled or allowed to invest its funds, or any part thereof, with the commissioners for the reduction of the national debt:
5. For any other purpose which shall be certified to be legal in England or Ireland by her Majesty’s Attorney or Solicitor-General, and in Scotland by the Lord Advocate, and which shall be allowed by one of her Majesty’s principal Secretaries of State as a purpose to which the powers and facilities of the said acts ought to be extended; provided that the amount of the sum or value of the benefit to be assured to any member, or any person claiming by or through him or her, by any society for any purpose so certified and allowed as herein-before mentioned, shall not exceed in the whole 200*l.*; and that this limitation shall be inserted in the rules of every society established for any purpose so certified and allowed; and that no such last-mentioned society shall be entitled or allowed to invest its funds or any part thereof with the commissioners for the reduction of the national debt.
3. *Member may withdraw from society, the Rules of which do not prescribe the time, &c., on giving notice, and paying all arrears.*—And be it declared and enacted, That any member of a friendly society, the rules of which do not prescribe the time when or the conditions on which members shall be allowed to withdraw themselves, shall be allowed to withdraw himself or herself at any time from such society on giving written notice to the secretary or other proper officer of the society of his or her intention to do so, and on payment of all arrears due by such member; but after giving such notice as aforesaid no member shall be entitled to have any

benefit from the funds of the society, or be liable to any further subscription or payment other than the amount of the arrears due from him or her at the time of giving such notice.

3. *Payments to society shall be kept distinct for each purpose subscribed for, or extra payments made for contingencies.*—And be it enacted, That when a society is formed, under the provisions of the said acts or this act, for any purpose in addition to that of providing relief, maintenance, or endowment, in case of infancy, old age, sickness, widowhood, or other natural state as aforesaid, the contributions or payments for every such other purpose shall be kept separate and distinct, or the charges defrayed by extra subscriptions of the members, at the time such contingencies take place.

4. *Separate accounts to be kept for each particular benefit subscribed for.*—And be it enacted, That the rules of every friendly society established after the passing of this act shall provide that a book or books be kept, in which all monies received or paid on account of any particular fund or benefit for which the rules of the society provide shall be entered in a separate account, distinct from the monies received and paid on account of any other benefit or provision.

5. *Returns of the rates of sickness and mortality, assets, and liabilities, shall be sent by every society to the registrar of friendly societies every five years.*—And be it enacted, That the returns of the rate of sickness and mortality required by law to be sent by every friendly society at intervals of five years to the barrister or advocate by whom the rules of the society may have been certified shall be henceforth sent to the registrar of friendly societies in England, Scotland, and Ireland respectively, according to such form as shall be prepared for that purpose by the said several registrars under the direction of one of her Majesty's principal Secretaries of State; and with every such return shall be sent a report of the assets and liabilities of such society; and this provision shall be inserted in the rules of every society which shall be established after the passing of this act.

6. *Penalties for not making returns to the registrar required by law.*—And be it enacted, That the treasurers, trustees, stewards, or other principal officer of every such society, who by the rules of such society are or is bound to prepare or cause to be prepared the yearly general statement of the funds and effects of such society, shall be the persons who shall be respectively bound to make or cause to be made, and to send to the registrar of friendly societies the said returns of the rate of sickness and mortality, and the said report of the assets and liabilities of such society; and every such person who shall refuse or wilfully neglect to make or cause to be made or to send the said returns of sickness or mortality, or the said report of the assets and liabilities of such society, at the time and in the manner prescribed by the said acts or this act, shall be liable to a penalty not exceeding the sum of 5*l.*, to be re-

covered, with costs, before any two justices of the peace having jurisdiction where such society shall have its place of meeting; and on nonpayment thereof, the same, with the reasonable costs of conviction, shall be levied by distress and sale of the goods and chattels of the offender or offenders by warrant under the hand and seal of such justices.

7. *For establishing the legality of certain societies.*—And be it enacted, That any friendly society established before the passing of this act for any purpose which is herein-before specified, or for any legal purpose which shall be certified and allowed as is herein-before provided, and shall not have been adjudged not to be within the provisions of the first-recited act by any court of competent jurisdiction, shall be deemed to have been within the provisions of the said act from the time at which the rules thereof shall have been or may be certified or allowed by the barrister or advocate appointed to certify the rules of friendly societies.

8. *Repeal of part of 10 G. 4, c. 56, and 4 & 5 W. 4, c. 40.*—*Societies legally established not excluded from benefit of said acts.*—And be it enacted, That so much of the said acts of the tenth year of the reign of King George the Fourth, and of the fifth year of the reign of his late Majesty, as specifies the objects or purposes for which a society may be established under the provisions of the said acts or either of them, or as gives to any court of sessions of the peace any power of confirming and allowing the rules of any such friendly society rejected or disapproved by the barrister or advocate appointed to certify the rules of friendly societies, shall be repealed: Provided always, that the repeal of so much of the said acts as is herein repealed shall not exclude from the benefit of the said acts any society legally established according to the provisions of the said acts, the rules of which were certified and enrolled before the passing of this act.

9. *Provisions of 39 G. 3, c. 79, and 57 G. 3, c. 19, not to extend to friendly societies.*—And be it enacted, That the provisions of an act passed in the thirty-ninth year of the reign of King George the Third, intituled "An Act for the more effectual Suppression of Societies established for seditious and treasonable Purposes, and for better preventing treasonable and seditious Practices," and also of another act passed in the fifty-seventh year of the reign of King George the Third, intituled "An Act for the more effectual preventing seditious Meetings and Assemblies," shall not extend to any society duly established under the statutes in force relating to friendly societies, or to any meeting of the members or officers thereof, in which society or at which meeting no business whatever other than that of the relief, maintenance, or endowment of the several persons to whom benefits are assured by the rules of such society are treated of, and which is established solely for the purpose of assuring benefits depending on the laws of sickness or mortality.

10. *Barrister appointed to certify rules to be*

*styled Registrar of Friendly Societies in England, &c., and shall be paid by a salary instead of fees.*—And be it enacted, That after the passing of this act the barrister or advocate appointed to certify the rules of friendly societies shall be styled the Registrar of Friendly Societies in England, Ireland, and Scotland respectively, and shall be appointed by the commissioners for the reduction of the national debt, and shall hold his office during the pleasure of the said commissioners, and that the Registrar of Friendly Societies in England shall be paid by salary instead of fees; and that it shall be lawful for her Majesty to grant to the barrister already appointed for that purpose in England a salary equal to the net average amount of fees received by him during the last three years for certifying the rules of friendly societies, after deducting the expenses incurred by him for office rent, salaries of clerks, stationery, and other expenses incident to the execution of his office, to be ascertained by the commissioners of her Majesty's treasury, provided such salary shall not exceed the sum of 1000*l.* by the year, and to every registrar of friendly societies in England hereafter to be appointed a salary not greater than 800*l.* by the year, and every such salary shall be paid by four equal quarterly payments; and any registrar of friendly societies in England who shall be appointed, or shall die, resign, or be removed from his office, in the interval between two quarterly days of payment, shall be entitled to a part of his salary proportional to that part of such quarter of a year during which he shall hold his appointment.

11. *Registrar to retain out of the fees received by him sufficient money to defray salaries and expenses of office.*—*If fees not sufficient, balance to be paid out of consolidated fund.*—And be it enacted, That the commissioners of her Majesty's treasury may allow the registrar of friendly societies in England to retain out of the fees received by him for certifying the rules of friendly societies, and for making awards and other proceedings as herein-after provided, such sum as will defray the salary due to him, and also such sum as will defray the expenses from time to time allowed by the said commissioners for office rent, salaries of clerks, stationery, and other expenses incident to the execution of his office; and the balance, if any, shall be paid over to the account of the consolidated fund of the United Kingdom of Great Britain and Ireland; and the said commissioners shall from time to time regulate the manner in which such fees are to be received, kept, and accounted for; and if such fees shall not in any year be sufficient to defray such salary and expenses, the balance shall be paid out of the said consolidated fund.

12. *So much of 10 G. 4, c. 56, as requires rules to be filed with clerks of the peace, &c., repealed.*—*Rules now filed, &c., to be taken off and returned to the registrar.*—*One transcript of certified rules, and all rules returned, shall be kept by registrar.*—*Rules certified by registrar to be of full force.*—And be it enacted, That so

much of the said act of King George the Fourth as requires that a transcript of the rules of any society established under that act, or to which the provisions of that act have been extended and made applicable, shall be deposited with or filed by the clerk of the peace of any county, riding, or division of a county in England, and a certificate thereof returned to the society, and that the same shall be laid before and allowed and confirmed by the justices at any sessions of the peace, shall be repealed; and that all transcripts of such rules which are now filed with the rolls of the sessions of the peace in any county, riding, or division of a county shall be taken off the file, and returned to the said registrar of friendly societies in England, Ireland, and Scotland respectively; and that after the passing of this act each of the said registrars shall keep one of the transcripts of all rules of any such society certified by him, and all the transcripts of rules which shall be so returned to him, in such manner as shall be from time to time directed by one of her Majesty's principal Secretaries of State; and that all rules certified by any such registrar shall be of the same force, and all the provisions of the said act of his Majesty King George the Fourth shall apply to them, as if they had been confirmed by the said justices, and filed with the rolls of the sessions of the peace.

13. *Registrar shall not certify rules unless society adopt tables certified by the Actuary of National Debt Office, &c.*—And be it enacted, That after the passing of this act the registrar of friendly societies in England, Scotland, or Ireland shall not certify the rules of any friendly society established after the passing of this act for the purpose of securing any benefit depending on the laws of sickness or mortality, unless such society shall adopt a table which shall have been certified to be a table which may be safely and fairly adopted for such purpose under the hand of the actuary to the commissioners for the reduction of the national debt, or of some person who shall have been for at least five years an actuary to some life insurance company in London, Edinburgh, or Dublin; and the name of the actuary by whom any such table shall have been certified shall be set forth in the rules, and printed at the foot of all copies of such table printed for the use of the society.

14. *For appointing new trustees in certain cases.*—And be it enacted, That whenever any person seised or possessed of any lands, tenements, or hereditaments, or other property, or any estate or interest therein, as a trustee of any such society, shall be out of the jurisdiction of or not amenable to the process of the High Court of Chancery or Court of Exchequer in England or Ireland, or the court of session or sheriff court in Scotland, or shall be idiot, lunatic, or of unsound mind, or it shall be unknown whether he or she be living or dead, it shall be lawful for the registrar of friendly societies in England, Ireland, and Scotland respectively, on behalf and in the name of the person seised or possessed as aforesaid, to

convey, surrender, release, assign, or otherwise assure the said lands, tenements, hereditaments, or property, or estate or interest, to the person duly nominated as trustee of such society in his or her stead, either alone or with any continuing trustee or trustees; and every such conveyance, release, surrender, assignment, or assurance shall be as valid and effectual to all intents and purposes as if the person being out of the jurisdiction or not amenable to the process of the said courts, or not known to be alive, or being idiot, lunatic, or of unsound mind, had been at the time of the execution thereof present, living, of sane mind, memory, and understanding, and had by himself or herself executed the same.

15. *Settlement of disputes between managers and members, &c., may be referred to registrar, unless law officers refer the same to a superior court.*—And be it enacted, That every dispute between the trustees or managers of any friendly society and any member or officer thereof, or any executor, administrator, or next of kin of any such trustees, managers, member, or officer, or any creditor or assignee of any trustees, managers, member, or officer of any such society who may become bankrupt or insolvent, or any person claiming to be such executor, administrator, next of kin, creditor, or assignee, or to be entitled to any money paid to such society, or to any benefit arising therefrom, or with respect to the management of the affairs of such societies, for the settlement of which, according to the laws now in force, recourse must be had in England or Ireland to one of her Majesty's superior courts of law or equity, and in Scotland to the court of session or sheriff court, may be referred in writing to the registrar of friendly societies in England, Ireland, and Scotland, respectively; and where the value of such subject matter in dispute does not exceed 20*l.*, every such dispute shall be so referred, unless in England or Ireland her Majesty's Attorney or Solicitor General, or in Scotland the Lord Advocate, shall certify in writing under his hand that such dispute ought to be decided by the judgment of a superior court of law or equity; and the said registrar shall have power to proceed *ex parte* on notice in writing to the said trustees or managers left or sent by the said registrar to the office of the said institution, or to the last known place of residence of such trustees, managers, members, or officers; and whatever award, order, or determination shall be made by the said registrar shall be binding and conclusive on all parties, and shall be final to all intents and purposes, without any appeal; and all payments, assignments, sales, and transfers, made in pursuance of any such order shall be good in law; and no submission to or award or determination of the said registrar shall be subject or liable to or charged with any stamp duty whatever.

16. *On such reference registrar may inspect books and administer oaths.—Rules evidence, perjury.*—And be it enacted, That on any such reference the said registrar shall be authorized

to inspect and to require the production before him of any book or books belonging to the said institution relating to the matter in dispute, and to administer an oath to any witness appearing before him; and every person who, upon such oath, shall wilfully and corruptly give any false evidence before such registrar shall be deemed to be guilty of perjury,

17. *When trustee shall be absent, &c., registrar may order stock to be transferred and dividends paid.*—And be it enacted, That whenever it shall happen that every person in whose name any part of the several stocks, annuities, and funds transferable or which hereafter shall be made transferable at the Bank of England, or in the books of the Governor and Company of the Bank of England, is or shall be standing as a trustee of any such society, shall be out of England, Ireland, or Scotland respectively, or shall be a bankrupt, insolvent, or lunatic, or it shall be unknown whether such trustee is living or dead, it shall be lawful for the registrar of friendly societies in England, Ireland, or Scotland respectively, to direct that the accountant-general, secretary, or deputy secretary, or other proper officer for the time being of the Governor and Company of the Bank of England, do transfer in the books of the said company such stock, annuities, or funds standing as aforesaid to and into the name of such person as such society may appoint, and also pay over to such person as aforesaid the dividends of such stock, annuities, or funds; and whenever it shall happen that one or more only, and not all or both, of such trustees as aforesaid shall be so absent, or a bankrupt, insolvent or lunatic, or it be unknown whether any one or more of such trustees be living or dead, it shall be lawful for the said registrar to direct that the other and others of such trustees who shall be forthcoming and ready and qualified to act do transfer such stock, annuities, or funds to or into the name of such person as aforesaid, and also that such forthcoming trustee do also receive and pay over the dividends of such stock, annuities, or funds as such society shall direct; and all such transfer and payments so made shall be valid and effectual to all intents and purposes whatsoever.

18. *Secretary of state to fix amount of fees payable on reference, and registrar to determine who shall pay them.*—And be it enacted, That one of her Majesty's principal Secretaries of State shall be empowered from time to time to fix reasonable fees to be paid on any such reference, and for such other proceedings as aforesaid, and all such fees shall be paid in the first instance by the trustees or managers of the society, and the registrar shall determine in and by his award by which of the parties and in what proportion the expense of such fees shall be finally borne, and the trustees or managers of such society, having paid such fees, shall be entitled to recover them from the party or parties against whom they shall be so finally awarded.

19. *Justices empowered to enforce payment of fees under awards.*—If persons do not pay

money pursuant to order; the same, together with costs may be levied by distress.—*Proviso as to Scotland.*—And for enforcing payment of such fees, and of any sum of money so awarded to be paid, be it enacted, That any one justice of the peace residing within the county within which such society shall be held, or within which the party resides against whom such award is made, upon complaint made upon oath by the party desiring to have the benefit of the award, or, in case of the managers or trustees of any such society, by an officer of such society appointed for that purpose, may summon the person against whom such award shall be made to appear at a time and place to be named in such summons; and upon his or her appearance, or in default thereof upon due proof upon oath of the service of such summons, any two justices residing within the county aforesaid, upon due proof of the execution of such award, may order payment of the fees and money thereby awarded to be paid to the party appearing to be entitled thereunto, with such costs as shall be awarded by the said justices, not exceeding the sum of 10s.; and in case the person against whom such order shall be made shall not pay the sum of money so ordered to the person and at the time specified in the said order, such justices shall, by warrant under their hands and seals, cause the same to be levied by distress and sale of the goods of the person on whom such order shall have been made, or by other legal proceeding, together with such costs as shall be awarded by the said justices, not exceeding the sum of 10s. and also the costs and charges attending such distress and sale or other legal proceeding, returning the overplus (if any) to the owner: Provided always, that in Scotland it shall be competent to enforce payment of such fees, and of any sum of money so awarded to be paid, by proceeding before the sheriffs in the same manner as is by the law of Scotland competent for the recovery of any debt of the like amount.

20. *Rules certified by registrar, and awards executed under his hands, shall be received in evidence.*—And be it enacted, That every transcript of the rules of any such society purporting to be certified by the registrar of friendly societies in England, Ireland, or Scotland, and every award or other proceeding as aforesaid purporting to be executed under the hand of the said registrar, shall be receivable in all courts and before all justices and others as evidence that such rules have been duly certified, or such award made, or such proceeding had, until the contrary shall be made to appear.

21. *Forms set forth in the schedule to this act may be used.*—And be it enacted, That the forms of certificate and award which are set forth in the schedule annexed to this act may be used with such alterations as may be necessary to adapt them to the particular circumstances of each case, and that no objection shall be made or advantage taken for want of form in any such proceedings by any persons whomsoever.

22. *Act to be construed with 10 G. 4, c. 56. and 4 & 5 W. 4, c. 40.*—And be it enacted That this act shall be construed with and as part of the said acts of the tenth year of the reign of King George the Fourth, and of the fifth year of the reign of his late Majesty.

23. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed during this session of parliament.

#### SCHEDULE TO WHICH THIS ACT REFERS.

##### *Form of Registrar's Certificate.*

I hereby certify, That these rules (or alterations of rules) are in conformity to law, and to the provisions of the statutes in force relating to friendly societies.

A. B.

The Registrar of Friendly Societies  
in England (Ireland or Scotland.)  
day of

##### *Form of Registrar's Award.*

In pursuance of the provisions contained in the Act to amend the Laws relating to Friendly Societies, I, A. B., the Registrar of Friendly Societies in England, (Ireland or Scotland,) do hereby award, order, and determine that C. D. (*specifying the name of the party or officers of the society,*) do on the day of at pay to E. F. the Sum of ; and I do further award, order and determine that the fees of this my award amounting to shall be borne and paid by the said

A. B.

The Registrar of Friendly Societies  
in England (Ireland or Scotland.)  
day of

#### LIST OF PUBLIC GENERAL ACTS.

(Continued from p. 247, ante.)

9 & 10 VICTORIA.

CAP. 22. An Act to amend the Law relating to the Importation of Corn. June 26, 1846.

23. An Act to alter certain Duties of Customs. June 26, 1846.

24. An Act for removing some defects in the Administration of Criminal Justice. June 20, 1846. See the act, p. 286, ante.

25. An Act for preventing Malicious Injuries to Persons and Property by Fire, or by Explosive or Destructive Substances. June 26, 1846. See the act, p. 312, ante.

26. An Act for abolishing the Office of Superintendent of Convicts under Sentence of Transportation. July 3, 1846. See the act, p. 314, ante.

27. An Act to amend the Laws relating to Friendly Societies. July 3, 1846. See the act, p. 335, ante.



28. An Act to facilitate the Dissolution of certain Railway Companies. July 3, 1846. See the act, p. 260, *ante*.

29. An Act for granting to her Majesty until the 5th August, 1846, certain duties on Sugar imported into the United Kingdom. July 3, 1846.

30. An Act to define the Notice of Elections of Members to serve in Parliament for Cities, Towns, or Boroughs in Ireland. July 16, 1846.

31. An Act to settle an Annuity on Viscount Hardinge and the two next surviving Heirs Male of the Body of the said Viscount Hardinge, to whom the Title of Viscount Hardinge shall descend, in consideration of his great and brilliant services. July 27, 1846.

32. An Act to settle an Annuity on Lord Gough and the two next surviving Heirs Male of the Body of the said Lord Gough, to whom the Title of Lord Gough shall descend, in consideration of his important services. July 27, 1846.

33. An Act to amend the Laws relating to Corresponding Societies and the Licensing of Lecture Rooms. July 27, 1846.

34. An Act to enable the Commissioners of her Majesty's Woods to construct a New Street from Spitalfields to Shoreditch. July 27, 1846.

## NEW BILLS IN PARLIAMENT.

### OPENING OF THE COURT OF COMMON PLEAS.

THIS bill is intended to extend to all barristers practising in the superior courts at Westminster the privileges of serjeant-at-law in the Court of Common Pleas.

It recites, that it would tend to the more equal distribution and to the consequent despatch of business in the superior courts of common law at Westminster, and would at the same time be greatly for the benefit of the public, if the right of barristers-at-law to practise, plead and to be heard extended equally to all the said courts; but by reason of the exclusive privilege of serjeants-at-law to practise, plead and have audience in the Court of Common Pleas at Westminster during Term time, such object cannot be effected without the authority of parliament; it is therefore proposed to enact,

That from and after the passing of this act, all barristers-at-law, according to their respective rank and seniority, shall and may have and exercise equal rights and privilege of practising, pleading and audience in the said Court of Common Pleas at Westminster with the said serjeant-at-law; and it shall be lawful for the justices of the said court, or any three of them, of whom the Lord Chief Justice of the said court shall be one, to make rules and orders, and to do all other things necessary for giving effect to this enactment.

## APPEAL FROM THE REVISING BARRISTERS TO THE COMMON PLEAS.

THE following is the substance of the Return made to the House of Commons by the late Lord Chief Justice Tindal, pursuant to an address of the House of Commons on the 24th June, and printed 14th July, 1846.

### 1. COUNTIES.

#### Gloucestershire—Eastern Division.

#### *Bishop v. Helps; Same v. Cox.*

1 & 2.—In each of these two cases, the point raised for the determination of the Court of Appeal was precisely the same. The objector, in each case, had delivered his notice of objection at the post-office on the 24th August (observing all the requisites prescribed by the 100th section of the Registration Act, as to the form of such delivery), and the notices would, by the ordinary course of the post, be delivered at the place to which they were respectively directed on the 25th August, being the day on or before which the notice of objection is required by the 7th section of the same act to be given both to the overseer of the parish and to the party objected to. But by reason of some cause, which was unexplained, the notices, instead of being delivered at the place to which they were respectively directed on the 25th August, as in the ordinary course of the post they ought to have been and would have been delivered, were not actually delivered until the 26th August, and whether these were valid and sufficient notices of objection was the question raised for the court; upon which question the court held, that the objector having done all that the statute required or made necessary on his part to be done, by delivering them at the post-office in the proper time, and in the proper form of delivery, the notices must be considered good and sufficient, and as the revising barrister had held the notices not to be sufficient, the court reversed his decision, and directed the names of 14 claimants mentioned in the case (No. 1.) and 20 claimants mentioned in case (No. 2.) to be expunged from the register.

#### *Pruen v. Cox.*

3.—The appeal in this case also turned upon the sufficiency of the notice of objection; the notice described the objector's place of abode as "No. 398, High Street, Cheltenham," and in the "register of voters for the parish of Cirencester." The objection taken to the notice was, that in the register the objector was described as of "Cheltenham" only, without any further particularity; but as this more particular description gave the true place of the objector's abode, the court held the addition to the general description in the register of the particular street and number of the house where the objector resided could not invalidate the sufficiency of the notice, and affirmed the barrister's decision, that the notice of objection was good, with costs.

**Yorkshire—West Riding.**

*Alexander v. Newman.*

4.—This case raised a very important question, namely, the proper construction of the statute 7 & 8 Will. 3, c. 25. By the 7th section of that statute, all conveyances are declared to be void which are made in order to multiply voices, or to split and divide the interest in houses or lands amongst several persons, to enable them to vote at elections of members to serve in parliament. And the question before the court was, whether a conveyance made to a large number of persons and their heirs as tenants in common, where the object and design of all the parties to the conveyance was avowedly that of multiplying voices at elections was, upon that ground only, necessarily a void conveyance; such conveyance being in the particular case made in completion of a *bond fide* contract of sale, under which the purchasers paid the purchase-money to the seller, and the seller gave up the possession of the premises to the purchasers who kept such possession, and in which transaction there was no secret reservation or trust of any kind for the benefit of the seller, and the court held, that the statute intended to declare void all such conveyances made for the object and purpose prohibited by the act as were fraudulent and collusive, and such only, that is, conveyances where it was intended by the parties themselves that no money should pass to the grantors, or that the deed should be nothing more than a conveyance in form, not a conveyance in reality; but that in cases where the conveyance was really intended by the parties thereto to have the full operation which it purported on the face of it to carry, and where there was no secret trust or reservation of any kind for the benefit of the grantor; and where, for instance, it was intended to be a real conveyance made in completion of a *bond fide* contract of sale; that in such cases the conveyance was not within the intention of the statute, although the motive or object of the parties might be that of creating qualifications to vote at elections, and thereby to multiply voices or split freehold, and the court accordingly affirmed the decision of the revising barrister, who had directed the names of the claimants to be kept on the register.

This decision had the effect of retaining the names of fifty claimants on the register, whose cases were consolidated with this appeal.

*Middlesex.*

*Wood v. Overseers of Willesden.*

5.—This case related to the sufficiency of the description of the voter, and also of his qualification as it appeared on the register of voters for the county of Middlesex.

The description of the voter upon the register made in conformity with schedule (A.) No. 3, of the statute 6 Vict. c. 18, was this: "Henry Hall, of the Grove, Neasdon, in this parish;" and it was objected that Neasdon was no parish, and that it did not appear within what parish it was situated; but the answer given

by the Court was, that the register as to this part of it appeared to be made out by the overseers of the parish of Willesden, and that the words "parish of Willesden" immediately preceded the list of voters, and stood as a heading of every page, so that of necessity "Neasdon, in this parish," must be taken to mean "in the parish of Willesden." The next question reserved was, whether the property was sufficiently described for the purpose of being identified? but as it appeared upon the face of the register that the place of abode of the voter was "the Grove, Neasdon," and that he claimed to vote "for house and land in Neasdon, of which he was the occupier," the Court thought the property as sufficiently described for the purpose of being identified, and affirmed the decision of the revising barrister for the respondents.

*Walker v. Payne.*

6.—In this case also, as in the last, the objection taken was, that the place of abode of the voter was not sufficiently described upon the register; the column which was headed by the words "place of abode" was filled up with the words "travelling abroad," and it was insisted before the revising barrister that he ought to expunge the name of the voter, as directed by the 40th section of the registration act; but we thought the revising barrister had properly refused to expunge the name; for that this was not a case in which the place of abode was omitted as contemplated by the 40th section, but where the voter had no fixed place of abode, and consequently that the 40th section of the statute did not apply.

*Lancashire—Southern Division.*

*Riley v. Crowsley; Beswick v. Ashworth; Beswick v. Aked.*

7, 8, 9, &c.—The point raised in each of these cases respectively was the same as that raised in the case No. 4, and the Court of Common Pleas decided each of them in conformity with the principle laid down in their decision of the case No. 4, viz. that if it did not appear that the conveyance was fraudulent or collusive, but, on the contrary, if it was made in completion of a *bond fide* contract of purchase and sale, the case did not fall within the statute of Will. 3, although made with the object of splitting freeholds, and multiplying voices at elections. In the cases No. 7, No. 11, and No. 12, the revising barrister having held the conveyance to fall within the statute, and to be, therefore, void, and having directed the names mentioned in these respective cases to be expunged, the Court of Appeal reversed those decisions, and directed the names of the 27 persons mentioned in the schedules in the case No. 7, the names of the 133 persons mentioned in the schedules in the case No. 11, and the names of the 43 persons mentioned in the schedule to the case No. 12, to be restored to the register. And, on the other hand, with respect to the cases No. 8, No. 9, No. 15, and No. 16, the revising barrister having held the

conveyances to be good, notwithstanding the objections taken thereto, the court affirmed those decisions, and thereby continued on the respective registers the names of the 31 persons mentioned in the schedules in the case No. 8, the names of the 169 persons mentioned in the schedules in the case No. 9, the names of the 9 persons mentioned in the case No. 15, and of the 2 persons mentioned in the case No. 16.

*Rawlings v. Overseers of West Derby; Same v. Bremner; Hoyland v. Bremner.*

10.—This was the case of an objection made by the overseers against the validity of the claims of 40 persons, whose names are enumerated therein, upon the ground that the notices of claims were left at the overseer's house on a Sunday. The revising barrister thought the objection good, and expunged the names. The Court of Appeal, however, was of opinion, that the act of delivering such notice was not void by the registration statute; which carefully excepts Sunday in various other instances from being a day on which certain acts can be done, but is silent as to this act; nor is it void by any other statute, nor by the common law. The judgment of the revising barrister was therefore reversed, and the names of the 40 claimants directed to be restored to the list.

*Cheshire—Northern Division.*

*Newton v. Overseers of Mobberley; Same v. Overseers of Craley; Thorneley v. Aspland.*

13, and 14.—These two cases arose upon the grant of rent-charges, the question of law in each being virtually the same as that decided by the court in No. 4, namely, whether the grants of these rent-charges were made void by the statute of Will. 3, before referred to, as being made for the purpose of splitting freeholds and multiplying voices at elections; and the court adhered to the same decision as before, and affirmed the judgment of the revising barrister.

*Murray v. Thorneley.*

17.—In this case an objection was taken to the names of two persons being retained on the list of voters on the ground that they had not been in the actual receipt of the rents and profits for their own use for six calendar months at least before the last day of July, as is required by the sixth section of the statute 2 Will. 4, c. 45. The property in respect of which the votes were claimed was a rent-charge created by deed, bearing date the 28th January 1845; but, inasmuch as the first payment of this rent-charge did not become due until the 1st January 1846, a day subsequent to the last day of July, the three judges who heard the case argued, held there had been no such actual possession for the period of time required by the act, and affirmed the decision of the revising barrister to that effect.

*Cheshire—Southern Division.*

*Bayley v. Overseers of Nantwich.*

18.—The objection taken in this case before

the revising barrister was, that the notices of the claims delivered by the appellant and twenty-four other claimants were not proved to have been delivered in due time, and the revising barrister, thinking the objection well founded, directed the names to be expunged. But, inasmuch as it appeared by the case that the notices were duly posted at Manchester on such a day as was sufficient for them to have reached Nantwich within the time required by the statute, although, from some neglect in the Post-office, they did not reach Nantwich until after that day, we thought the same principle of decision which we had laid down in the case of a notice of objection applied also to a notice of claim, and that as the claimants had done all that was necessary on their part and required of them by the statute, the notices were sufficient. We accordingly reversed the decision made below, and directed the twenty-five names to be restored to the register.

*Hecklin v. Astrobus.*

19.—Is a case parallel in all its circumstances with the last, except that this relates to the posting of a notice of objection, instead of a notice of claim. And the revising barrister having held the notice of objection insufficient, and directed the claimant's name to stand on the register, we did, upon the principle laid down in the last case, hold his decision to be wrong, and reversed the same, directing the voter's name to be expunged.

*Notts—Northern Division.*

*Ashmore v. Lees.*

20.—In this case the claimant, James Ashmore, and sixteen other persons, whose cases are consolidated with that of Ashmore, claimed the right to vote for the Northern division of the county of Notts, as inmates of the Sherwood hospital, describing their qualification to be "freehold interest in lands, buildings and corn-rents in lieu of tithes." The question raised for our determination, and upon which our judgment ultimately turned, was, whether the inmates of the hospital, upon the proper construction of the constitutions and the private Acts of Parliament by which the hospital was governed, were entitled, either legally or equitably, to a freehold interest in any lands or rents to the amount of 10*l.* by the year. And we were of opinion, upon the proper construction of those constitutions and the Acts of Parliament, the inmates had an equitable interest in the lands and rents of the hospital to the amount of 3*s.* 6*d.* by the week, and to that amount only, that is, to a smaller amount than 10*l.* by the year. We, therefore, affirmed the decision of the revising barrister, that the names of the several persons should be expunged from the register.

II. CITIES AND BOROUGHES.

*Leakfield.*

*Barton v. Ashley.*

1.—In this case the appellant had objected to the name of the respondent being retained

upon the list of voters for the city of Lichfield, and, in his notice of objection to the overseers, had stated generally, "that he objected to the name being retained in the list of persons entitled to vote in the election of members for the city of Lichfield." But, under the statute, it is the duty of the overseers to make out two lists of voters; one of persons, entitled to vote in respect of property occupied within the parish; and another list of persons, not being freemen, entitled to vote in respect to any right other than that of property. And an objection was taken, that the notice of objection delivered by the appellant was not sufficient, inasmuch as it did not specify in which list of voters the respondent's name was to be found; and the revising barrister was of opinion that the notice of objection was insufficient on that ground, and the Court of Appeal has affirmed his decision.

*Dartmouth.*

*Knowles v. Brookings.*

2.—The question in the case No. 2, arose upon the form of the notice of objection sent to the appellant. The notice of objection was signed by the objector (the respondent), with the addition of the true place of his abode, as it was at the time of serving the notice; but this place of abode was different from that which appeared against his name upon the list of voters; and the question was, whether a notice of objection signed with the addition of the true place of abode was sufficient within the meaning of the Act, or whether it was necessary, to constitute a valid notice of objection, that the objector should add the place of abode as it appeared on the list of voters. Three of the Judges of the court of Common Pleas were of opinion that the description by the true place of abode of the objector was sufficient, contrary to the opinion of the remaining Judge, who held the description must be that of the same place of abode as is inserted in the list of voters. The judgment of the court was therefore given that this notice was sufficient, and the decision of the revising barrister was thereby affirmed. The cases of eight other persons were consolidated with this appeal.

*Chatham.*

*Colville v. Overseers of Chatham.*

3.—In this case the question reserved for the consideration of the Court of Appeal was, whether in the case of a person claiming the right to vote for a borough by reason of the occupation of a house as tenant the fair annual rent was the proper criterion of value, without deducting therefrom the average annual expense of landlord's repairs; and the Court of Common Pleas was of opinion that the fair annual rent was to be considered as the clear yearly value within the meaning of the statute 2 Will. 4, c. 45, s. 27, and affirmed the decision of the revising barrister to that effect. This decision disposed of the cases of seventeen claimants, which were consolidated with the above.

*Rochester.*

*Colville v. Town Clerk of Rochester.*

4.—In this case the notice of objection sent by the post to the claimant was put into the post by the objector on Saturday the 23d August, and was delivered to the claimant on Sunday the 24th; and it was objected by the claimant before the revising barrister, that the notice being delivered and served on a Sunday, such delivery and service was altogether void, of which opinion was the revising barrister, who thereupon disallowed the notice of objection, and retained the name of the claimant on the list of voters. The Court of Appeal, however, thought the decision wrong; that the notice of objection directed by this statute was not as was contended by the respondent, in the nature of a writ or process, the service whereof is prohibited on a Sunday by the statute 29 Car. 2, c. 7, neither was it prohibited by the Registration Act, and they therefore reversed the decision.

The effect of this judgment was to expunge the name of the claimant, and those of 22 other persons whose cases were consolidated with the present.

*Scarborough.*

*Flounders v. Donner.*

5.—The claimant in this case described his qualification to vote to consist of two houses, but in the column of his notice of claim, in which the situation of his property ought to be described, he inserted the number of one of the houses in the street in which it was situated, but neglected to insert the number of the other house; and whether this was a compliance with the form prescribed by the 6th Vict. c. 18, Schedule (B.), No. 3, was the question. The revising barrister held the notice of claim insufficient, and that the claimant was not entitled to have his name inserted in the list; and we think this decision right. This case disposed of the claims of seven other individuals, which arose under similar circumstances, and were consolidated with this case.

*Salisbury.*

*Wills v. Adey.*

6.—This case proceeded upon a statement of similar facts, and involved the same question with that which was decided by the court of appeal in the case of the borough of Dartmouth (No. 2); and three of the judges of the court who heard the argument in this case, held the notice of objection to be insufficient, whilst the same judge who in the former case held the notice insufficient, retained his opinion. The court therefore affirmed the decision of the revising barrister, that the name of the appellant, and the names of five other individuals whose cases were consolidated with the present, should remain expunged from the list.

*Westminster.*

*Bishop v. Snedley, High Bailiff.*

7.—The question in this case was, whether

the claimant, James Bishop, had been duly rated in respect of the premises which he occupied.

The name of Bishop did not appear upon the rate-book; the only name which appeared there was that of the landlord, John Scott; and there appeared upon the rate-book to be a sum of 3*l.* 2*s.* 6*d.* to be still unpaid for rates due on the 6th April preceding. The revising barrister held that it was incumbent on the claimant (the occupier) to see that those rates had been actually paid on or before the 20th July; and that the evidence produced by him neither showed actual payment, nor a legal tender of the amount of the rate, and that the claimant was therefore not entitled to vote; and we were of the same opinion, and affirmed his decision.

*Lincoln.*

*Hitchens v. Brown.*

8.—The objection in this case was taken as to the sufficiency of the description of the qualification in respect of which the claimant had delivered his notice of claim. He had described his qualification as "a house, No. 54, Much Lane, St. Peter-at-Arches, and previously in the occupation of a house, No. 21, St. Mary's Street, in the parish of St. Mary-le-Wigford, Lincoln." The revising barrister held this a sufficient description of two successive occupations, and we affirmed his decision, with costs.

*London.*

*Croucher v. Brown.*

9.—The respondent in this case claimed the right to vote in the election of members for the city of London, as a freeman of the city of London, and liveryman of the Company of Bakers. It was objected that he was disqualified, inasmuch as he had been admitted freeman since the 1st March, 1831, "otherwise than in respect of birth or servitude," which it was contended was a disqualification under the 2 Will. 4, c. 45, s. 32. The revising barrister decided that the prohibition in section 32 was confined to those cases in which the claimant's right to vote was in respect of his being a burgess or freeman of any city or borough, and did not extend to the present case, where the claimant's right to vote was that of a freeman and liveryman of the city of London. And the Court of Appeal held this to be the proper construction of the statute, and affirmed the decision.

*Coogan v. Luckett.*

10.—The question raised upon this case was, whether the value of the house occupied by the appellant was sufficient to confer the right to vote. The revising barrister decided it was not sufficient, stating the facts upon which his decision was founded. The Court of Appeal held this not to be a question of law upon which they had authority to decide, but a question of fact only, for the decision of the revising barrister himself; and that, at all events, as nothing appeared upon the statement to show his

decision to be wrong, it must be held by them to be right, and the court accordingly affirmed the same.

*Bushell v. Luckett.*

11.—The respondent in this case objected to the name of the appellant being retained on the list of voters for the city of London. The revising barrister expunged the name of the appellant upon the ground that he had not been duly rated, as to which he reserved a question for the Court of Appeal. But the Court of Appeal, on consideration of the facts stated in the case, held that the appellant was rated duly in a rate of the premises made in September, 1844, and that such rate must be held in law to continue until a new rate was made, published, and allowed, and that the objection therefore did not exist, and reversed the decision accordingly.

*Judson v. Luckett.*

12.—In this case the appellant claimed the right to vote in respect of a qualification which was described in the list of voters as "part of a house," and the first question reserved for the consideration of the Court of Appeals was, whether such description was sufficient in point of law; and we held that it was.

The next question reserved for us was as to the sufficiency of the rating. The landlord's name was on the rate with the house opposite to it, and the appellant's name was under that of the landlord, but nothing was carried out against the name of the appellant, nor were the two names connected by a bracket or otherwise: but it appeared to us that a rate so made must be construed to charge the appellant in respect of the premises placed opposite the landlord's name, and as the revising barrister had decided otherwise, we reversed his decision.

*Cook v. Luckett.*

13.—The question in this case turned upon the sufficiency of the rating of the defendant to the poor-rate in respect of the house in his occupation, which formed the qualification of his right to vote. But the court held upon the facts stated in the case, that notwithstanding the landlord had bargained to pay the poor-rate, and had actually paid it, yet as the tenant's name was upon the poor-rate, he must be taken to have been *bond fide* called upon, and did *bond fide* pay the poor-rate, within the meaning of the 75th section of the Registration Act, so as to answer the objection, and the court reversed the decision of the revising barrister.

*Pariente v. Luckett.*

14.—In this case, also, the question turned upon the sufficiency of the rating of the appellant on the poor-rate. The revising barrister held the rating to be insufficient, but referred the question to the Court of Appeal. Upon consideration of the facts stated by him, that court thought the name of the appellant did appear on the rate to be the person rated for the premises, within a reasonable construction of that instrument, or that at all events, both

landlord and tenant were rated, which would be sufficient, and reversed the decision accordingly.

*Luckett v. Knowles.*

15.—This case arose upon an objection made by the appellant against the name of the respondent being retained on the list of voters, on the ground of his place of abode inserted in the list being incorrect. The revising barrister corrected the mistake by inserting the true place of abode of the claimant. And the question reserved for our determination was, whether the revising barrister had the power to make that amendment under the 40th section of the Registration Act. And, upon consideration of that section, we were of opinion, that as he had the power of inserting the true place of abode, both where it was entirely omitted, and also where it was insufficiently described for the

purpose of being identified, the present case was substantially within the latter branch of the provision. The decision of the revising barrister was therefore affirmed.

*Luckett v. Bright.*

16.—The objection raised by the appellant against the name of the respondent being retained on the list of voters for the city of London was, that he was not the occupier of the house in respect of which he claimed the right to vote. The revising barrister retained his name on the list. And as it appeared upon the facts stated, that the respondent, as one of the joint lessees of the house, had the right to occupy with them, and as there is nothing stated to show the revising barrister to be wrong in his decision that the appellant did occupy, we held we could not do otherwise than affirm his decision.

III. The Cases in which the Court of Common Pleas have ordered costs to be paid to the Respondents and the amount of the costs taxed, are as follow :

			£	s.	d.
No. 3 in Return I.—Pruen,	Appellant	}	-	-	-
	Cox, Respondent				
No. 1 in Return II.—Barton	Appellant	}	-	-	-
	Ashley Respondent				
No. 7 in Return II.—Bishop	Appellant	}	-	-	-
	Smedley, Respondent				
No. 8 in Return II.—Hitchins	Appellant	}	-	-	-
	Brown Respondent				

(Signed)

N. C. TINDAL,

Lord Chief Justice of the Court of Common Pleas at Westminster.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

IV. PLEADINGS.

ABATEMENT.

See *Creditor's suit*.

ADMINISTRATOR.

See *Parties*, 3.

AGENT.

See *Parties*, 11.

AMENDMENT.

66th Order of 1845.—A second order to amend cannot be obtained as of course after the answer of a defendant, though other defendants may not have answered. *Duncombe v. Levy*, 32 L. O. 177.

ANSWER, LAST.

See *Dismissal*, 2.

ASSIGNEE.

See *Parties*, 5.

CONTRIBUTION.

See *Parties*, 10.

CREDITORS' SUIT.

*Petition.—Abatement.*—Where the plaintiff to a creditor's suit died, the court allowed an-

other creditor, who had been reported as such, to have the conduct of the suit, upon petition, without requiring a bill of revivor or a supplemental bill to be filed. *Brown v. Lake*, 32 L. O. 227.

DEMURRER.

A defendant served with a copy of the original bill under the 23rd Order of August, 1841, did not enter an appearance. At the hearing, leave was given to amend the bill, by adding parties; the same defendant was served with a copy of the amended bill, and thereupon he appeared and demurred: *Held*, on motion, that the demurrer of the defendant in the stage to which the cause had arrived, was irregular, and must be taken off the file. *Powell v. Cockerell*, 4 Hare, 565.

Cases cited in the judgment: *Ritchie v. Aylwin*, 15 Ves. 79; *Ellice v. Goodson*, 3 Myl. & Cr. 633; *Sidgier v. Tyte*, 11 Ves. 202.

DISMISSAL.

1. *Replication.*—The replication mentioned in the 111th of the general orders of May 1845, means a replication in the form directed in the 93rd of such orders, and therefore, in a transition case, where a subpoena to rejoin has been served prior to these orders coming into operation: *Held*, that publication could not pass under the 111th order, "without rule or order," and that a special order was necessary.

Upon a motion to dismiss, under such cir-

circumstances, the court will (unless good cause be shown) order that publication do then pass.

Where prior to the orders of 1845, a replication only in the old form has been filed, a replication in the new form mentioned in order 93 may be regularly filed, for the purpose of putting the cause at issue, but *secus*, where a subpoena to rejoin has been served prior to these new orders. *Wheatley v. Wheatley*, 7 Bea. 577.

Case cited in the judgment: *Spencer v. Allen*, 4 Hare, 455.

2. *Last answer*.—The words "last of the answers" in the 114th Order of May, 1845, means the last answer of any one of several defendants, so that the right of one defendant to move to dismiss for want of prosecution is not delayed by his co-defendant's neglect to answer.

The expressions "the last answer," and "the last of several answers" in the 66th Order, and in the 16th Order, Art. 33, means the last of the several answers filed by several defendants. *Dalton v. Hayter*, 7 Bea. 587.

3. *Construction of Orders 14 and 114 of May, 1845*.—The times of vacation must be reckoned in computing the time for the dismissal of a bill for want of prosecution after answer, unless they occur within the time allowed for excepting to the answer. *Wiles v. Cooper*, 32 L. O. 60.

And see *Replication*.

#### EXCEPTIONS.

An order for setting down exceptions to a report of insufficiency in an answer, if served after, though on the same day as an order to amend and for defendant to answer the amendments and exceptions together, is irregular. *Zulueta v. Ardouin*, 13 Sim. 631. See 1 Phillips, 368.

#### IMPERTINENCE.

*Vendor and purchaser*.—*Specific performance*.—Before answer to a bill for specific performance, the plaintiff obtained an order of reference as to title. The defendant, under a threat of attachment, put in his answer, in which he alleged that one of the conditions of sale was framed with a fraudulent intent: *Held* that that allegation was not impertinent. *Emery v. Pickering*, 13 Sim. 583.

#### INFANT.

See *Parties*, 12.

#### INJUNCTION.

*Admission in answer*.—A judgment creditor, who had obtained possession of his debtor's estates under an *elegit*, filed a bill, after the debtor's death, against his devisee, claiming to have a charge on the estates, under the 1 & 2 Vict. c. 110, and praying to have the debt raised and paid out of the estates. The defendant, in her answer, claimed the estates, not as devisee, but under a conveyance executed by the debtor in his lifetime. The plaintiff, instead of amending his bill filed a supplemental bill against the defendant, praying that the

conveyance might be declared fraudulent and void as against him, and also that an ejectment to recover possession of the estates, which the defendant had brought shortly before she put in her answer to the original bill, might be stayed. The answer to the supplemental bill admitted, in effect, that the conveyance was voluntary. The V. C. of England however held, that as that admission was made in the answer to the supplemental bill, it was not sufficient to sustain the injunction. *Parker v. Constable*, 13 Sim. 536.

#### JOINT-STOCK COMPANY.

A gave a bond to the public officer of a joint-stock company (in which he afterwards became a shareholder), to secure advances made to him by the company. The bank afterwards suspended their business, and brought an action on the bond in the name of the officer. A then filed a bill on behalf of himself alone, against the officer and the directors of the company, praying for an account of the dealings and transactions of the company down to the time when their business ceased, that his share of the capital and profits might be ascertained, and set-off against the money due on the bond, and that the surplus might be paid to him: *Held*, that the bill prayed, in effect, for a dissolution of the company, and therefore, that all the shareholders ought to have been made parties to it. *Abraham v. Hannay*, 13 Sim. 581; see *Walworth v. Holt*, 4 Myl. & Cr. 619. See *Parties*, 10; *Provisional Directors*.

#### LIS PENDENS.

See *Parties*, 4.

#### MISJOINDER.

The bill sought to charge trustees with mismanagement and misapplication of the trust estate. The answer insisted that one of the two co-plaintiffs had acquiesced. The court, upon motion, gave leave to amend by making such co-plaintiff a defendant, upon payment of the costs of the application, and giving security for the costs already incurred. The costs of the misjoinder were reserved to the hearing. *Bather v. Kearsley*, 7 Bea. 545.

#### NEXT OF KIN.

See *Parties*, 2.

#### PARTNERSHIP.

See *Joint-stock Company*.

#### PARTIES.

1. *Assignment pendente lite*.—None of the plaintiffs, who had an equitable interest only in the property in question, mortgaged their interests pending the suit: *Held*, at the hearing, that the mortgagee was a necessary party. *Solomon v. Solomon*, 13 Sim. 516.

2. *Next of kin*.—If, in an administration suit instituted by the next of kin of a testator at his death, the question is, whether the testator, by the words "my next of kin," meant his next of kin at his death or at a future period, not only the executor but also the person or persons who may by possibility be next of kin at

that period, ought to be made defendants. *Urquhart v. Urquhart*, 13 Sim. 613.

3. *Administration ad litem*. — A court of equity will not decree a general account and administration of assets, in a suit in which the deceased is represented by an administrator *ad litem* merely. *Croft v. Waterton, Waterton v. Croft*, 13 Sim. 653.

4. *Lis pendens*. — Observations on what is termed the "substantial representation," in a suit of absent parties, and how far such absent parties are bound.

After bill filed but before subpoena served, the defendant assigned the subject matter of the suit: *Held*, that the assignee was a necessary party, and that the court would, if necessary, grant an injunction to restrain any further assignment.

Scheduled creditors to a creditor's deed, who were not parties thereto, held not necessary parties to a suit by a subsequent incumbrancer, to have the monies out of which it was intended to pay such creditors raised, the trustees being parties. *Powell v. Wright*, 7 Bea. 444; see *Daly v. Kelly*, 4 Davis; P. C. 440.

See notes on this case, p. 234, ante.

5. *Assignee*. — A suit was instituted by the creditors' and official assignee of a bankrupt. The creditors' assignee died before decree, the official assignee died after decree, and a new official assignee being appointed, his name was, on motion, substituted under the 6 Geo. 4, c. 16, s. 67, as plaintiff in the suit. *Man v. Ricketts*, 7 Bea. 484; see *Mendham v. Robinson*, 1 Myl. & K. 217; *Beindridge v. Blair*, Younge, 386; *Lloyd v. Waring*, 1 Coll. 536.

6. *Trustees*. — Twenty years ago, 27 persons conveyed real and personal estate to trustees to sell, and to divide the produce: *Held*, that a bill might be filed by a few, on behalf, &c., against the trustees, to make them account; and that it was not necessary to make all the persons interested parties to the suit. *Smart v. Bradstock*, 7 Bea. 500.

7. *Trustee*. — A. by will bequeathed a sum of stock equally between B. and C. B. and C. by their respective wills bequeathed their respective residuary personal estates (which included their shares of the stock) among their children, and appointed executors. The children of B., and some of the children of C., filed their bill against the executor of A. to recover the fund, making the executors of B. and C., and the rest of the children of C. parties: *Held*, that although the suit was multifarious, yet as it had been brought to a hearing, and it was not open to the objection of misjoinder, the court might, if it thought proper, make a decree for the accounts and inquiries preparatory to the distribution of the fund.

That notwithstanding the bill alleged that the estate of B. was fully administered, and that the parties beneficially interested in the estate were parties to the suit, yet the executor of B. was a party against whom direct relief was in substance prayed, and he was not therefore a party to be served with a copy of the bill, within the 23rd order of August, 1841. *Powell v. Cockerell*, 4 Hare, 557.

Case cited in the judgment: *Benson v. Headfield*, 4 Hare, 32.

8. *Trustee*. — Suit against trustees, alleging breaches of trust, by omitting to make repairs, and to provide a fund for the renewal of leases, as directed by the will. The widow of the testator (who was tenant for life under the will), and two others, were the trustees. The widow married again, and afterwards died, leaving her husband surviving, and leaving assets of her separate estate: *Held*, that as there were assets of the widow, which under the circumstances of this case, were or might be liable to the trust, it was not a case in which the plaintiff could, under the 32nd Order of August, 1841, proceed against the other trustees and the husband of the testator's widow, without making a personal representative of the widow a party; and that the defect was not removed by the waiver of any relief against the assets of the widow, or against all the trustees, in respect of breaches of trust before the marriage of the widow. *Shipton v. Rawlins*, 4 Hare, 619.

Cases cited in the judgment: *Symonds v. Walker*, 3 Swanst. 75; *Munch v. Cockerell*, 8 Sim. 231.

9. *Costs*. — An adverse decree made in the absence of some of a class, the point not being considered to be one of difficulty.

Costs of an administration suit directed to be paid rateably out of the real and personal estate. *Burnett v. Foster*, 7 Bea. 540; see *Eyre v. Marsden*, 2 Keen, 564; 4 Myl. & Cr. 231.

10. *Provisional directors*. — *Contribution*. — One of the provisional directors of a projected railway company (which was not carried into execution) was sued by the engineer for services performed in surveying the line of the proposed railway; and judgment was recovered against him in that action.

Upon a bill filed by him against his co-directors for contribution, it being objected that the suit ought to have been for the general administration of the partnership affairs: *Held*, that the suit was properly framed.

The test of liability to contribution is liability to the plaintiff at law, and not the holding of shares in the projected railway.

The amount of the contribution of each director is to be ascertained by dividing the total loss by the number of directors who consented to act; and not by dividing it by the number of those who were named as directors in the prospectus; nor by reference to the number of shares subscribed for by each director.

The plaintiff having released one of the directors in order to render him a competent witness on the trial at law: *Held*, that if such release were a proper act to be done in furtherance of the defence of the action, his share of the loss is to be borne equally by all parties having the benefit of the defence at law, and inquiries were directed as to that point.

A person who originally is named in the prospectus as a director, and after ratifies and



consents to his appointment as such, is liable on the intermediate contracts entered into by his co-directors. *Lefroy v. Gore*, 1 J. & L. 571.

Cases cited in the judgment: *Singard v. Bromley*, 1 V. & B. 114; *Deering v. Earl of Winchelsea*, 1 Cox, 521.

11. *Affidavit*.—*Agent*.—A suit had been instituted by a purchaser from a mortgagee against the mortgagor, for a declaration of his rights, and upon the application of the plaintiff, an order had been made for a receiver. Pending this order, but before the appointment of the receiver, the plaintiff proceeded to cut down underwood, and to exercise other acts of ownership. One of the defendants, the agent of the mortgagor, (who was himself abroad, and had not been served with the subpoena,) without proving any authority for doing so, applied, upon affidavit merely, for an injunction. The motion was refused, upon the grounds, that the defendant, though agent, had no interest in the estate, and might have filed a bill for his principal, upon which to found the application. *Hunter v. Nockolds*, 32 L. O. 36.

12. *Infant*.—*Decree*.—Where a decree has been obtained in a suit to which an infant is a party defendant, without the concurrence of such infant, after she has attained 21, the court will allow her to put in a further answer and to have the cause reheard.

An infant applying on coming of age to put in a further answer must, if the suit is properly constituted, pay the costs of the application. *Snow v. Cole*, 32 L. O. 61.

13. *Vendor and purchaser*.—After a contract for sale of an estate, the wife of the vendor obtained possession of several of the deeds relating to the title, which she refused to part with, on the ground that she had some claim upon the property, in consequence of which, as was alleged, the purchase could not be completed: *Held*, that she was improperly made a party to a bill for specific performance. *Muston v. Bradshaw*, 32 L. O. 105.

#### PRO CONFESSO.

*Construction of Orders 77 and 79 of May, 1845*.—Where a defendant has not put in his answer in due time, under the 77th of the Orders of May, 1845, and the plaintiff has given the notice required by the 79th of those orders, the court will order the clerk of the records to attend with the bill for the purpose of its being taken *pro confesso*, although a writ of attachment may not have been issued. 32 L. O. 177.

#### PROVISIONAL DIRECTORS.

See *Parties*, 10.

#### REPLICATION.

*Dismissal of bill*.—Upon motion by one of several defendants to dismiss the bill under the 1st article of the 14th Order of May, 1845, the order to dismiss will not be refused merely on the ground that other defendants have not answered, without showing sufficient cause for

the delay in getting in the answer of such other defendants.

The court will not, as of course, or except in cases of necessity, give the plaintiff leave, under the reservation of the 93rd Order of May, 1845, to file more than one replication in the same cause.

The exclusion of the time of vacation from the computation of time for filing replications in the 4th article of the 14th Order of May, 1845, does not apply to the time for filing replications generally, but only to the time for filing replications under the exigency of the 41st article of the 16th Order of May, 1845.

Where a plaintiff had by mistake submitted to an order limiting him to a time for filing his replication as against some defendants, the court refused, on a motion, *ex parte*, to give him liberty to file another replication against the other defendants, but permitted him to move, on notice, for leave to withdraw the replication, or that publication might be enlarged. *Stinton v. Taylor*, 4 Hare, 603.

And see *Dismissal*, 1.

#### TRUSTEES.

See *Parties*, 6, 7, 8.

#### VENDOR AND PURCHASER.

See *Parties*, 13; *Impertinence*.

### V. EVIDENCE.

#### ADMISSIONS.

The Irish society held to be trustees for public purposes, and not accountable to the companies of London, notwithstanding the latter were, after providing for the public objects, entitled to the surplus revenues of the estates vested in the former.

After some negotiation, an agreement was entered into between King James I., and the city of London, for the grant by the former to the latter of a large tract of land in Ireland, to be colonized by English. It was stipulated that 20,000*l.* should be advanced to be expended in the undertaking, that certain houses should be built, &c. The city compulsorily levied the amount upon the city companies. In 1613, King James granted a charter creating a corporation (the Irish Society,) the members of which were to be appointed by the city, for the management of the plantation, to whom the land was thereby granted, but no trusts were declared. The principal part of the lands were afterwards divided in severalty between the companies, but the town lands, fishings, &c., were retained by the Irish Society, who, after applying a considerable portion towards public purposes, such as building churches, schools, &c., divided the residue amongst the companies. The Irish Society having annually divided a considerable sum amongst its members, and made large expenditures in tavern expences, and in other modes which were objected to, a bill was filed by one of the companies against the society, the city of London,

and the Attorney-General, to correct the alleged abuses; but it was held, that the powers granted to the society, and the trusts reposed in them were, in part, of a general and public nature, independent of the private benefit of the companies; that the companies, though interested in any surplus which might remain after the general purposes were answered, were not entitled to control the exercise of the powers given for general and public purposes; and that the court had not jurisdiction, upon the application of the companies, to determine upon the propriety of the expenditure made, though the discretion might be controlled elsewhere and in another manner. The bill was dismissed with costs.

Allegations and admissions, used for the purpose of defence against attempted extortion, under the form of legal proceedings, or for the purpose of obtaining justice irregularly when regularly it could not be had, ought not to be used as evidence of the rights of the parties. *Held*, consequently, that allegations and admissions made in the course of arbitrary proceedings against parties in the star chamber, and in a treaty for compromise which arose out of the sentence, and in the proceedings which took place before the House of Commons in an attempt to obtain relief from the oppression of that court, could not in any way influence the judgment of a court of equity. *The Skinners' Company v. The Irish Society*, 7 Bea. 593.

#### CERTIFICATE OF MARRIAGE.

See *Marriage*.

#### CREDIT OF WITNESS.

Though it is the more usual and regular course to file articles or objections to the credit of a witness previous to applying for leave to exhibit interrogatories for the examination of witnesses in support of such articles, still a simultaneous motion for leave to file articles and exhibit the interrogatories is not irregular.

Previous to a cause being at issue, the plaintiff's solicitor prevailed on *A. B.* to make a voluntary affidavit, not required by the proceedings in the cause. *A. B.* was afterwards examined as a witness on behalf of the defendant, and was cross-examined by the plaintiff; her affidavit and depositions were contradictory, but the affidavit was not produced to her at the time of her examination. Upon an application by the plaintiff to file articles and examine witnesses to discredit *A. B.* *Held*, that though the conduct of the plaintiff's solicitor had been highly improper, still the motion ought to be granted, leave being given to the defendant to examine witnesses to support her credit, and as to the circumstances under which the affidavit had been sworn. *Harvey v. Mount*, 7 Bea. 517.

Cases cited in the judgment: *Purcell v. McNamara*, 8 Ves. 324; *Wood v. Hammerton*, 9 Ves. 145.

#### DEPOSITIONS.

An order to read in one cause the deposi-

tions taken in another cause between the same parties is not irregular because obtained before the depositions are published in both causes. *Sourton v. Marriott*, 32 L. O. 276.

And see *Suppressing Depositions*.

#### EXECUTOR, EXAMINATION OF.

If, in answer to a claim made in an administration suit by a *cestui que trust*, the executor pleads payment, the *cestui que trust* cannot examine the executor upon interrogatories to prove notice of the trust. *Ford v. Bryant*, 31 L. O. 576.

#### MARRIAGE CERTIFICATE.

On an application for payment out of court of a fund belonging to a married woman, the court will not dispense with the production of a register of the marriage, although the marriage may have been solemnized abroad; unless evidence is produced to show that a certificate of the register could not be obtained. *Jope v. Pearce*, 32 L. O. 252.

#### PRIVILEGED COMMUNICATIONS.

1. *A.* was employed by the attorney of the plaintiff in an action to collect evidence for the plaintiff. *Held*, that although *A.* was not an attorney, the communications made by him to the plaintiff and his attorney, relating to the evidence, were privileged. *Steele v. Stewart*, 13 Sim. 533. See *Bunbury v. Bunbury*, 2 Beav. 173.

Case cited in the judgment: *Hughes v. Bidulph*, 4 Russ. 190.

2. Letters written by a defendant, after the institution of the suit, to an unprofessional agent abroad, "confidentially and in reference to the defence of the defendant to this suit." *Held*, not privileged. *Kerr v. Gillespie*, 7 Bea. 572.

#### PRODUCTION OF DOCUMENTS.

1. It is no answer to a motion for production of documents in the custody of a defendant, that they tend to support an indictment pending against the defendant for perjury committed in the cause. *Rice v. Gordon*, 13 Sim. 580.

2. A defendant, in his answer, admitted the possession of documents relating to the matters in the bill, except the question whether *A.* survived *B.*, which was the question upon which the plaintiff's title depended. *Held*, that he was not entitled to have the documents produced. *Edwards v. Jones*, 13 Sim. 632.

3. A defendant admitted the possession of documents, but stated that they were all prepared and made since the dispute arose, in contemplation of the litigation of that dispute, and her defence against the plaintiff's claim; but she did not connect them with her professional advisers. *Held*, that they were not privileged, and ought to be produced.

A bill was filed, insisting on a partition already made between the plaintiff and defendant, who were tenants in common. The bill contained an alternative prayer for a partition under the court. The defendant insisted on the

invalidity of the partition, t admitted the possession of documents showing the manner in which she had since dealt with her share of the property. *Held*, that the plaintiff had an interest in them, if it were only for the purpose of ascertaining who were tenants in common with him. *Maden v. Veevers*, 7 Bea. 489. See 5 Bea. 505.

4. The 17th Order of August, 1841, was intended to apply to cases in which there are several defendants answering separately.

The only two defendants required to answer joined in one answer. It was found insufficient, and the plaintiff obtained an order to amend, and that the defendants might answer the exceptions and amendments together. Some of the original interrogatories were altered and new ones added; but the note to the amended bill required the defendants to answer all the interrogatories, without excepting those previously answered. *Held*, that there was no irregularity.

A plaintiff, unless he specifically offers to do so by the bill, or is required to do so by a cross-bill, is not bound to produce, previous to the defendant being compelled to put in his answer, documents admitted to be in his (the plaintiff's) possession, and alleged as proving his case. *Bate v. Bate*, 7 Bea. 528.

Cases cited in the judgment: *Princess of Wales v. Lord Liverpool*, 1 Swan. 114, 580; and 3 Swan. 567; and 1 Wils. C. C. 113; and 2 *Ibid* 29; and see *Jackson v. Sedgwick*, 2 Wils. C. C. 167; *Taylor v. Hemming*, 4 Bea. 235; *Shepherd v. Morris*, 1 Bea. 175.

5. A defendant having by his answer admitted that a deed was in his possession or power, believing at the time that it was in the possession of his solicitor, but which proved not to be the case: *Held*, that an affidavit could not be received to show his mistake, and that the usual order must be made for its production. *Carter v. Ebbetts*, 32 L. O. 302.

6. An order to produce documents before the Master continues in force, although a subsequent order may have been made giving liberty to inspect them at the office of a solicitor. *Whicker v. Hume*, 32 L. O. 202.

#### SUPPRESSING DEPOSITIONS.

Commissioners for the examination of witnesses, employed as their engrossing clerk, on the execution of the commission, one who, little more than three months previously, had been a clerk to the solicitor of the plaintiff in the cause: *Held*, that such previous employment was no disqualification for the office of engrossing clerk; and such appointment was no ground for suppressing the depositions.

The court refused to suppress depositions on a ground of objection to which the attention of the commissioners had not been called,—where a different objection had been made before them, and had been properly overruled. *Wood v. Freeman*, 4 Hare, 552.

#### WITNESS.

See *Credit of Witness*.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

*Strange v. Brennan*. July 30th.

BONUS TO SOLICITOR.—CHAMPERTY.

*The court will not entertain a bill to enforce an agreement to allow a solicitor, out of a fund to be recovered by him, a commission by way of bonus for his trouble and responsibility.*

THIS was an appeal from the Vice-Chancellor of England. The defendant, Margaret Brennan, was entitled to certain funds in court, to obtain which it became necessary to take out certain letters of administration. Being unable to provide the sureties required by the prerogative court, the defendant applied to a solicitor (practising in Ireland,) who entered, with another individual, into the usual bonds, procured the letters of administration to be granted to the defendant, and the fund in court to be subsequently transferred into her name. The bill was filed to restrain the defendant from selling out the said fund, and also to enforce the specific performance of an agreement whereby the defendant undertook and consented that her said solicitor should retain for the space of six years out of such of the said funds as should be recovered, sufficient to indemnify himself and his co-surety against any loss which they might incur from having entered into the above-mentioned bonds; and further to pay to her said solicitor, as a bonus or consideration and exclusive of the law costs, the sum of 10% per cent. on such sum or sums of money as might actually be recovered and realised out of the said fund. The bill also prayed that the plaintiff might be declared to have a lien on the fund for costs, and a suitable remuneration for the said solicitor's trouble, if he was not entitled to the above commission. To this bill the Vice-Chancellor had allowed a general demurrer.

Mr. James Parker and Mr. Kennion submitted on behalf of the plaintiff, that the doctrine of champerty could not apply to the present transaction; inasmuch as the fund in question was not the subject of litigation at the time of making the agreement. Co. Litt. *Champerty*. At all events, the alternative part of the prayer in the bill for a suitable remuneration and costs would be decreed.

The Lord Chancellor, without hearing Mr. Romilly and Mr. Bird, who appeared in support of the demurrer, said that he had never seen a case which exhibited such an utter want of equity. Not only was the unfortunate defendant to have such part of the fund as her solicitor should think proper tied up for six years, but also to allow him 10% per cent. on the amount to be recovered, exclusive of his law costs. It was most unfortunate that such an

agreement had ever been prepared, and he should have been much surprised if the Vice-Chancellor had hesitated long in allowing this demurrer.

Appeal dismissed with costs.

### Mells Court.

*Pinner v. Wright*, July 13, 1846.

#### AMENDING NOTICE OF MOTION.—COSTS.

*If a motion stands over to amend the notice, and instead of amending, a new motion is made, the costs of the first motion will be given upon the hearing of the second.*

In this case Mr. Wright originally moved to dismiss for want of prosecution.

Mr. Taylor objected, that the cause was abated from the deaths of some of the parties, on which the motion stood over, leave being given to amend the notice.

Instead, however, of doing that, a new motion was made, that the suit might be renewed within a limited time or the bill dismissed.

Mr. Taylor then asked for the costs of the former motion.

Mr. Wright urged, that they should be costs in the cause, for when the first motion was made the defendants were wholly ignorant of the abatement.

But Lord Langdale, on finding that the former motion stood over, said, he considered it to be on now, and gave the costs as of an abandoned motion.

*In re Wilson*. July 6, 1846.

#### SUBSTITUTED SERVICE.

*Before the court will direct service at a man's office to be good service on him, it must have some proof that he is carrying on communication with the office.*

Mr. Knandersley moved to substitute service at the office of a solicitor for personal service upon him, on an affidavit stating only that the clerks at the office stated that they did not know where to find him.

But Lord Langdale held, that this was not enough. It was necessary for the deponent to state that from circumstances coming to his knowledge, he believes that the persons at the office were carrying on communication with the solicitor, and that communications left there would reach him.

### Vice-Chancellor of England.

*Attorney-General v. Wakema*. July 6, 1846.

#### BILL, AMENDMENT OF.—CONSTRUCTION OF ORDERS 68 AND 69 OF MAY 1845.

*While the Attorney-General is the plaintiff in a suit, it is sufficient that the affidavit required by the 69th Order, to found a special application to amend, should be made by the solicitor, and it must be made to the Master.*

In this case, which was an information on the part of the Attorney-General, it became necessary to amend by a special application under the 68th Order of May, 1845, by which an affidavit is required, showing that the matter of the proposed amendment is material, and could not, with reasonable diligence, have been sooner introduced into the bill, it being also required by the 69th of the same orders, that the affidavit referred to in Order 68, should be made by the plaintiff and his solicitor, or by the solicitor alone, in case the plaintiff, from being abroad or otherwise, is unable to join them.

Mr. Anderdon now moved for a special order to amend, contending, that as there was no plaintiff who could comply with the requisitions of the order, it was not a case in which the application could be made to the Master, according to the 20th Order of 1833.

Mr. Bethell, contra, said, that where there was no plaintiff who could make the affidavit required by the 68th Order, it must be made by the solicitor alone. It had also been determined in *Christ's Hospital v. Grainger*, 10 Jur. 37, that the application must be made to the Master.

The Vice-Chancellor said, that if the orders did not not apply to the case where there was no plaintiff, then they must be put out of consideration; but his Honour considered it determined by the case of *Christ's Hospital v. Grainger*, that where the plaintiff could not make the required affidavit, it might be made by his solicitor, and he dismissed the motion with costs.

### Common Pleas.

*Doe v. Roe*. Trinity Term, 1846.

#### JUDGMENT AGAINST THE CASUAL EJECTOR —SUFFICIENCY OF AFFIDAVIT.

*On a motion for judgment against the casual ejector in ejectment it is sufficient if the affidavit of the service of the declaration, &c., contain the initials of tenant in possession's christian names.*

Talfourd, Sergeant, moved the court for judgment in this case against the casual ejector. It appeared that the affidavit of the service of the declaration and the notice only stated the initials of the christian name and the surname of the tenant in possession, and did not set out the christian names in full. This, it was submitted, would not affect the application, as in many cases it was next to impossible to find out the christian names of parties to actions of ejectment.

*By the Court.* We think the rule ought to be made absolute.

Rule absolute.

### NOTES OF THE WEEK.

#### LEGAL EDUCATION.

The conference of the deputations from the

Inns of Court has terminated in their recommending to their respective societies the institution of rewards or honours, or both, to students undergoing examination; and for this purpose five lectureships are to be established on the following subjects:—1. Civil Law and General Jurisprudence. 2. Law of Real Property and Conveyancing. 3. Constitutional Law, Criminal and Crown Law. 4. Common Law. 5. Equitable Jurisprudence. We shall take an early opportunity of stating the details, which will be found in *The Law Review*, just published, No. 8.

#### ARRANGEMENT OF THE BUSINESS AT THE JUDGE'S CHAMBERS.

The Lord Chief Baron has issued a notice altering the time of sitting at his chambers as vacation judge for the remainder of the vacation, and now attends at 11 o'clock instead of 10, as heretofore.

#### RAILWAY DECISIONS.

The decision of the Vice-Chancellor of England in the case of *Columbine v. Chichester*, noticed in our last number, p. 310, we are informed was reversed on appeal by the Lord Chancellor on the 29th July.

#### MALPRACTICE.—BRANCH OFFICES.

A correspondent has called our attention to the case tried before Mr. Justice *Erie*, in which a London attorney was examined as a witness. It appeared that he permitted his name to be used at a branch office in a country town where he rarely went, and which was opened principally on account of business to be brought by an unqualified practitioner assuming the character of the attorney's clerk.

We are aware that many respectable attorneys have offices at more than one town or village, and where this is done *bond fide* for the convenience of clients living at different places, we are not aware that there can be any reasonable objection. Where there are several partners and one attends at each place, of course the arrangement is clearly unexceptionable, but where the business transacted arises from the clerk's connexion, although he be paid by salary and not by a share of the profits, and the attorney gives little or no personal attention to the practice, it is manifestly violating the spirit, if not the letter of the statute; and if the profits were really shared, although nominally in the shape of salary, we conceive the power of the court could reach the offenders. The client is entitled to the personal services of the attorney, and in an unreported case on the Northern Circuit, Mr. Baron *Bayley* nonsuited an attorney for services solely rendered by his clerk, and over which he gave no superintendence. It was also decided in a recent case where an articulated clerk had served at one of these branch offices, at which the attorney very rarely attended, that such service was insufficient, and the clerk was obliged to re-serve the deficient time.

#### PROMOTIONS AND APPOINTMENTS.

Sir Chas. Wetherell has been appointed Deputy Steward of the University of Oxford.

Joseph Phillimore, D.C.L., has been appointed Judge of the Consistory Court of Gloucester.

#### PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

##### House of Lords.

##### NEW BILLS.

Recovery of Small Debts and Demands in England. Passed.

Juvenile Offenders. In Committee. Marquis of Westminster.

General Registration of Deeds. — For 2nd reading. Lord Campbell.

Punishment for deterring Prosecutors' Witnesses, &c.—In Committee. Lord Denman.

Game Laws. To be reported.

Small Debt Courts:

St. Austell. In Committee.

Birkenhead. In Committee.

Commons Enclosure. Commons Amendment to be considered.

Tithe Act Amendment. In committee.

Poor Removal.—In Committee.

##### House of Commons.

##### NEW BILLS.

Northampton Small Debts Court.

Death by Accidents Compensation.—To be reported.

Deodands Abolition.—To be re reported.

Total Abolition of the Punishment of Death. Mr. Ewart.

County Rates. For 2nd reading.

Insolvent Debtors Amendment Act. For 2nd reading.

Recovery of Salvage. For 3rd reading.

Drainage of Land. To be reported.

Opening the Common Pleas Court. Attorney-General. Passed.

Copyhold Commission Continuance. For 3rd reading.

Turnpike Acts Continuance. For 3rd reading.

Highway Rates Continuance. For 3rd reading.

Religious Opinions. In committee.

Judgment Creditors. For 2nd reading.

Lunatic Asylums.—For 2nd reading.

Contagious Diseases.—For 2nd reading.

Small Debt Courts.—For 2nd reading.

##### POSTPONED.

Bankruptcy and Insolvency.

Episcopal Revenues and Dioceses.

#### THE EDITOR'S LETTER BOX.

SOME of the original Reports of Practice Cases are deferred till next week.

The Letters of X; T. P. and M. S. have been received.

# The Legal Observer.

SATURDAY, AUGUST 15, 1846.

— "Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

## THE SMALL DEBTS AND LOCAL COURT SCHEME.

At the close of the Session of 1844, namely, on the 9th August, (just two years ago) the act passed, 7 & 8 Vict. c. 96, for abolishing arrest in execution under 20l.; and last year, on the 9th August, 1845, that enactment was virtually repealed by the Small Debts and Local Courts Act, of the 8 & 9 Vict. c. 127. Now in August, 1846, another act on the same subject, but far more sweeping and comprehensive, is hastened on within a few days of the end of the session! Can it be expected, that this last project thus suddenly adopted and urged forward will be exempt from the confessed and palpable blunders of its predecessors?

We have admitted, indeed, that the present bill is less objectionable in some of its details than the former; but they are all wrong in principle and will be highly mischievous in practice. It is manifest, however, from the recent discussions in parliament, that in spite of all warning from those who are the best able to appreciate the probable results, our legislators are determined to pass the measure. They set at naught the suggestions of professional men, because they suppose them to be personally interested; but the truth is, that the interests of the public and the profession are identical; and it is the profession alone that can devise *practicable* schemes of real improvement. The great men in and out of parliament who talk and write about these subjects, cannot possibly be acquainted with the minute workings of the present, nor the probable changes which will be effected by the proposed new system. A little mistaken popularity is to be gained by passing a Local Court Bill, and

therefore, pass it must, unless peradventure some unforeseen difficulty should arise in adjusting the *patronage* with which the measure will interfere. Difficulties in that respect may yet arise before the bill can be steered clear of the rocks and shoals which it has yet to encounter. There are many exceptions and provisoes already introduced, and more perhaps may yet be demanded, which may finally so embarrass the plan, that it will hardly be worth the experiment of trying its presumed efficacy.

In the meantime, we shall venture to repeat the suggestions which we have from time to time made for altering the bill in some of its clauses, if its main principle must be conceded.

1. There should be concurrent jurisdiction preserved to the superior courts where the sum to be recovered exceeds five pounds. Supposing all the petitions in support of the measure which we hear of (and they are far from numerous) contain the *bona fide* expression of the public opinion, and that it is generally desired the experiment should be made, then the suitors will *voluntarily* resort to these proposed courts. Why *compel* them? Why deprive them of the choice of the old superior court? If females, or aged, sick, infirm, or nervous persons, desire to avoid the inconvenience or annoyance of a personal attendance before the court, why should they not be allowed to employ an attorney? Let it be remembered also, that the time and expense of travelling to the district court will be not only an actual loss, (which the bill does not propose to compensate,) but that the absence from home on every instance of these petty subjects of litigation, deranges the affairs, and injures the interests of the parties. Now, if the fees paid on the writ and other

proceedings in the superior courts were reduced, we are sure that the business would, on the whole, be done as cheaply, and we believe better done than in the inferior courts.

2. The fees to be allowed to attorneys should not be limited to 10s. or 15s. by express enactment, but the amount should be left to the determination of the judges who are to settle the rules of practice and regulate the course of proceeding.

3. The parties should have a right to appear by counsel or attorney, without asking for the leave of the judge, as the bill proposes. If the bill remains as it is, we would ask, when is this *leave of the judge* to be obtained? Is it to be granted, on the coming on of the cause, or is the party previously to wait on the judge, state the nature of the case, (and are both parties to be present,) and then ask for this permission? This would be too absurd to be endured. Then there must be some rule laid down. Is it to depend on the amount of the debt, or on the state of health, or mental capacity of the applicant, or what else? Really this is a very strange way of administering justice.

4. Attorneys who hold office under the present inferior courts are rendered eligible, with barristers, for the office of judge; that is, in the first instance; but all *future* vacancies are to be filled up by barristers of seven years standing. Now, in the last act, 8 & 9 Vict. c. 127, s. 9, attorneys, as well as barristers and special pleaders, were declared eligible. Why, we demand, should that enactment be repealed? What have the attorneys done since this time last year that they are to be excluded from the rare chance of holding this small judicial office? It must surely be an oversight, and will be corrected in the next stage of the bill.

5. No one should be heard as an advocate, except barristers and attorneys. The 54th section (as printed in the Commons) provides that the plaintiff and defendant, or *some person* on their behalf, shall attend on the hearing of the plaint. And although the small fees intended to be given to an advocate can only be "recovered" by a barrister or attorney, yet, if any person may appear for the plaintiff or defendant, there will soon be a numerous class of unqualified persons haunting these courts, and who will not need to "recover" any fees, for they will be paid, and that extravagantly, beforehand. If the act pass in this form, we venture to predict that the

evil will be enormous, unless, indeed, "the leave of the judge" be altogether withheld from such persons, and confined to the regular practitioners over whom the courts have an effectual jurisdiction.

We understand that many of these points have been suggested to the law officers of the crown, and we yet trust that on Monday next, when the bill, which has been re-committed, will be further considered, (if it must pass), will receive such amendments as may render it less injurious to the public and less obnoxious to the profession.

## NOTES IN EQUITY.

### MORTGAGES.—EQUITY OF REDEMPTION.

IN the number just published of the Law Review, p. 426, it is stated, as a remarkable fact, that "the equity of redemption was not admitted in this country till the 17th century." We agree with the writer that the circumstance here adverted to is indeed extraordinary, and well deserving of examination. By the ancient practice, when a thing (whether real or personal) was mortgaged, the property in it passed absolutely to the creditor, unless at the appointed time the money was duly paid by the debtor. At common law this is the rule still, though now for rather better than two centuries more rational notions have prevailed, and the mortgaged property being regarded as a *security*, may be demanded back from the creditor, upon payment of the debt, (principal, interest, and costs,) although the time originally agreed upon for such payment has long since expired. This indulgence to the debtor has given rise to the term *equity of redemption*; a term unknown to our ancient common law, and even now only used in courts of equity.

It was, apparently, not till towards the end of Elizabeth's reign that the equity now under consideration was claimed by mortgagors. "Against the introduction of this novelty," says Mr. Coots, in his able treatise,\* "the judges of the common law strenuously opposed themselves; and, though ultimately adopted by the increasing power of equity, they, nevertheless, in their own courts still adhered to the rigid doctrine of forfeiture; and in the result the law of mortgages fell entirely within the jurisdiction of equity. In the case of

\* Coots on Mortgages.

*Wade v. Goodall*,<sup>b</sup> 5 Co. 115, the parties did not seem to have entertained the idea of any remedy existing for the mortgagor's relief if the forfeiture was established at law." The cases on the point are to be found in the obscure and imperfect reports of Tothill, where the earliest precedent entitled to the praise of distinctness is thus laconically recorded:—"Hammer contra Lockard: a mortgagor relieved after the day of redemption, notwithstanding it was in infant's hands and a purchase. Trin. 10 Jac. 1<sup>st</sup>." Here, therefore, so near our own time as the year 1613, when Lord Ellesmere was Chancellor, we find Tothill noting it down as one of the "remarkable proceedings in Chancery," that a mortgagor was permitted to redeem "after the day of redemption." In 1627, we have the following case recorded by the same unsatisfactory chronicler:—"Keeble v. Powell. Notwithstanding lands forfeited, and a release, mortgage relieved. Michs. 2 Carl." At this time the great seal was in the custody of the Lord Keeper Coventry, a judge very eminent in his day, and whose judicial services have received the emphatic commendation of Lord Hardwicke, who observed of him, that "he was very able, and contributed a great deal towards modelling the Court of Chancery."<sup>c</sup> This Lord Keeper Coventry it was who in the case of *Bacon v. Bacon*, anno 1642, declared that "the court would relieve a mortgage to the 10th generation."<sup>d</sup> A declaration which though somewhat rhetorical, shows how completely the equity of redemption was in the short space of about forty years established in the Court of Chancery.

It is curious to observe, that in Scotland the law respecting the forfeiture of mortgages was anciently as rigid and inflexible as it was in England. This appears, (to refer to no erudite authority,) by the *Fortunes of Nigel*, where the hero is represented by Sir Walter Scott, (a lawyer by profession, and therefore not likely to be wrong on such a point,) as raising money to clear off a heavy mortgage debt which was required to be paid not only on a certain day, but at a certain place, and before the clock struck twelve. Failure in any

one of these particulars would be fatal, that is to say, the consequence would be an absolute irrecoverable transfer of the estate to the marble-hearted creditor. We know that this extreme measure of severity has since been relaxed in the law of Scotland. But the remarkable fact is, that by the ancient system of both countries the doctrine of mortgages was *forfeiture*, and not *redemption*; and no less striking is another fact, namely, that such also was the law of Rome before the era of the Emperor Constantine, who may be said to have introduced for the first time the equity of redemption in mortgage transactions. By the Roman Law, as thus amended, clauses of forfeiture were interdicted and were void. Such stipulations were known by the name of *Pacta legis commissoriae in pignoris*. They are positively forbidden and rescinded in the Code of Justinian. How then happens it that the clerical chancellors, (who, according to Mr. Spence,<sup>e</sup> were always profound civilians,) did never once attempt to correct the harshness of our ancient common law as to mortgages? How was it that so great a reformation was reserved for the lay chancellors of Queen Elizabeth and her two next successors? The question suggested by the article on Mr. Spence's work in the Law Review,<sup>f</sup> is one we think not incapable of fruitful investigation; namely, how much of our existing equity is referable to churchmen? The writer to whom we advert observes, and we agree with him, that "it is very easy to say that the ecclesiastical chancellors knew the civil law. But our impression is, that the lay Chancellors of Queen Elizabeth and of the first two princes of the Stuart line did more to fix the character of technical equity, as now understood in this country, than all the ecclesiastics put together. To suppose that the court did not advance, and that too with gigantic strides, under Sir Nicholas Bacon, Lord Ellesmere, Lord Bacon, and Lord Coventry, is to suppose what is contradicted by its own records, as well as by contemporary reports. It was in fact peculiarly in a transition state during the very period that Mr. Spence represents it to have been stationary; for it was not till the close of Lord Nottingham's career that the boundaries of equitable jurisdiction became settled; and the process

<sup>b</sup> This case, which came under Coke's own eye, shows that at that time the name as well as the notion of an equity of redemption was unheard of.

<sup>c</sup> See Life of Lord Kames, vol. 1, p. 246.

<sup>d</sup> 2 Powell on Mortgages, 993.

<sup>e</sup> See Spence's Equity Jurisdiction, passim.  
<sup>f</sup> No. 8, p. 423.



of so adjusting them commenced with a lay chancellor, Sir Thomas More."

This, after all, is no new proposition; it is but affirming that equity is but a superstructure built upon the foundation of the common law; a fabric, in short, which could not have been reared by mere ecclesiastics, who, though skilled in the canon law, and in some degree tinctured with the civil, were notoriously, and indeed avowedly ignorant of English jurisprudence.

## DEATH BY ACCIDENTS COMPENSATION BILL.

### CURIOUS CASE.

THE bill for awarding compensation to the representatives of deceased parties in cases of death by accidents has just (along with the accompanying measure for the abolition of deodands) passed the House of Commons, having already received the assent of the upper branch of the legislature. The principle upon which compensation is proposed to be allowed is one not only recommended by its justness and humanity, but which has also the advantage of being supported by the tried experience of other countries. For we believe that the practice of claiming what is called *assythment* is not confined to Scotland, where, however, it has been in force and constantly exercised from the earliest period of which there is any record or tradition. A remarkable case illustrative of the well-understood rules which exist in Scotland with reference to this subject is reported in some of the Scotch law books, although we are at present unable to lay our finger on the passage. The case excited more than ordinary attention from some remarkable circumstances attending it. A person at Edinburgh, by trade a barber, had occasion to travel to Glasgow on the outside of the stage coach. On the journey some racing commenced with a rival vehicle, upon which the barber, animated by the contest, offered the coachman a shilling to outspeed his opponent. The consequence was that the stage coach was upset, almost all the passengers were more or less injured, and the unfortunate barber, who may be regarded as in some degree the author of the calamity, was killed upon the spot. In these circumstances his widow and children instituted a proceeding in the Scotch Court of Supreme Civil Jurisdiction, the Court of Session, claiming damages for the injury sustained by them

in the loss of a husband and a parent. The demand was eagerly resisted by the stage coach company, who contended, and with no slight show of reason, that in this instance the ground of action was wholly, or in a great degree, occasioned by the folly and recklessness of the barber himself. But the court refused to listen to such an argument; holding, and justly holding, that the company were answerable for the acts of their servant, whose misconduct in racing was rather aggravated than alleviated by his taking a bribe from one of the passengers. The court, therefore, without the intervention of a jury, awarded 1,500*l.* damages to the plaintiffs; and the decision gave great satisfaction at the time to the profession and to the public.

### PRACTICE OF RETAINERS.

So far back as the year 1835, in the case of *Baylis v. Grout*, 2 *Myl. & K.* 316, a motion was made on the part of the defendants to restrain a gentleman of the bar from acting as counsel for the plaintiffs from whom he had received a retainer, on his promotion to the rank of king's counsel, on the ground that he had drawn the answer to the bill and had otherwise acted in the progress of the suit on behalf of the defendants. This motion raised the question, whether a barrister is entitled to a fresh retainer on being called within the bar; and whether, if his services be not so secured, he may consider himself at liberty to receive a retainer on the other side. After argument in support of the motion, the Master of the Rolls, the present Lord Chancellor, then Sir Charles Pepys, said that, as the defendants had not taken the usual means of securing the professional assistance of the gentleman in question, the court could not interfere; from which the legitimate inference appears to be, that the neglect of the precaution here pointed out will justify the consequence which the use of that proper precaution is calculated to avert.

Nevertheless, in the recent case of *Lucas v. Peacock*,<sup>a</sup> where, on a taxation of costs, a retainer given to a barrister on his elevation to the rank of a Queen's counsel was objected to, the Master of the Rolls observed:—"There is a question about a retainer. The junior counsel was promoted, and it was considered that a re-

tainer became necessary to insure the continuance of his services. I hardly think that that notion was well founded. It is new to me; but of this I am perfectly certain, that if I had been the plaintiff, and had been told that there was the least doubt about the matter, I should have said, "I will not lose my counsel upon any doubt of that kind: I will have no question about it." I think you will hardly find any person engaged in a cause who would not have said the same thing. It therefore comes to the question, whether that was an erroneous proceeding; and whether, in taxing the costs as between solicitor and client, it ought or ought not to be allowed. I do not give any farther opinion upon it, because, if the Master disallowed it upon any such notion, he will have an opportunity of reconsidering it. I do not wish to give any direction about it, for I know not whether the law of retainer is as stated; it may or it may not be so; but I have never understood it to be so.

## OPERATION OF THE STAMP ACTS.

### POWER OF ATTORNEY REQUIRING A STAMP.

THE late act, 7 & 8 Vict. c. 21, which substituted a duty of 2s. 6d. in respect of "agreements" previously chargeable with the duty of one pound; and a similar duty of 2s. 6d. in respect of any "letter or power of attorney" made for the sole purpose of appointing a proxy to vote at a meeting of any joint stock company, makes it important to distinguish clearly between instruments which are liable only to the reduced duty, and those upon which the higher duty is still chargeable.

The question as to the necessity of stamping a proxy, appears to have been raised for the first time in *The Monmouthshire Canal Company v. Kendall*,<sup>a</sup> but it was not decided in that case, the court holding that the parties were not, under the circumstances, at liberty to dispute the validity of the proxy on this ground. In a later case of *The Queen v. Kelk*,<sup>b</sup> the objection was taken under circumstances which brought the question directly under the consideration of the Court of Queen's Bench. By a local act, commissioners were to be appointed by the proprietors of lands to which the act related, and persons empowered by note in writing signed

by proprietors might act in the appointment on behalf of such proprietors. Certain proprietors by note in writing empowered a person named Burnaby, with others, to act for them in the appointment of a special commissioner under the act; and Burnaby, under this authority, gave a vote, the validity of which was disputed on mandamus. The question upon which the judgment of the court proceeded was, whether the authority under which Burnaby acted required a stamp, within the meaning of the Stamp Act, 55 Geo. 3, c. 184, which renders a letter or power of attorney of any kind, or a procuration, or commission, or factory in the nature thereof, liable to a stamp duty of 1l. 10s. After consideration, the court, with avowed reluctance, came to the conclusion, that the objection must prevail, and that the vote was bad. Burnaby, it was said, was substituted for the proprietors signing, and appointed to act for them, by the instrument in question, and it was impossible to deny that the writing by which he was appointed was either a letter of attorney or an instrument of procuration, and therefore required a stamp.

The recent act, 7 & 8 Vict. c. 21, already alluded to, may be considered in some degree as a legislative recognition of the correctness of the decision of the Court of Queen's Bench, in *The Queen v. Kelk*, for whilst it imposes a reduced duty of 2s. 6d. on instruments of proxy for voting at the meeting of any joint stock company, sect. 6 provides, that such instrument shall be available only for voting at one meeting, (the time of holding whereof shall be specified in such instrument,) or any adjournment thereof; and the next succeeding section prohibits the commissioners of stamps from stamping instruments, appointing proxies after the signing thereof, and affixes a penalty of 50l. for signing instruments appointing proxies not being duly stamped, or for voting under such instruments.

In the case of *The Queen v. Kelk*, it was argued, that the instrument required no stamp, because it invested the party to whom it was given with no discretion, inasmuch as he was informed by the persons appointing him, that he was to attend and record his vote for a person then named; but the Court of Queen's Bench, without expressing any opinion as to the weight to which the argument might be entitled, determined that it was not founded in fact.

<sup>a</sup> 4 B. & Ald. 453.

<sup>b</sup> 12 Ad. & El. 559.

In a very late case,<sup>c</sup> however, arising in respect of a power of attorney of a somewhat different description, the Court of Common Pleas expressly decided, that it was not necessary to constitute one man the attorney of another, that he should have a discretion.

*Walker v. Remmett*, which was decided in Easter Term last, arose upon the following state of facts. Harrison, the drawer of three bills of Exchange, addressed a letter to a person named Herbert, in whose hands the bills were lying without being indorsed, in these terms:—"I do hereby authorise you to indorse, or cause to be indorsed, my name to three several bills of exchange now in your possession, (describing them,) which said indorsement I do hereby undertake shall be binding upon me, and I do further undertake to pay you the amount of the several bills as they respectively become due, should they not be duly honoured at maturity." Herbert, in pursuance of this authority, indorsed the bills in Harrison's name; and an action having been brought on one of the bills so indorsed, by the indorsee, against the acceptor, the latter pleaded that Harrison did not indorse *modo et formâ*, and to prove the indorsement the letter to Herbert was produced stamped with an agreement stamp, and objected to as inadmissible in evidence, on the ground that it was a "letter of attorney," or a "procuracion," and required to be stamped accordingly. The objection was overruled at *nisi prius*, but afterwards came before the court upon a rule for a new trial.

It was strongly urged upon the court, in opposition to the rule, that the Stamp Act only contemplated a duty on a "letter of attorney" or "procuracion," when a regular formal instrument of that description was employed, and that extensive inconvenience would ensue from holding that every written direction to an agent to act for another in any matter, however trifling, required a stamp. It was also suggested, that as the letter contained other terms besides those conferring authority on Herbert, it partook of the nature of an agreement, and was properly stamped as such. On the other hand, it was observed, that the exemption in the Stamp Act of letters of attorney for the receipt of dividends in the government funds, provided such dividends were of less value than 3*l*.

yearly, proved that the legislature considered that the words would extend to letters authorising transactions of a very trifling description; and as to the suggestion that the letter might be regarded in the light of an agreement it was answered that the terms of agreement were mere surplusage, containing what would result by law from the previous authority; and that even if the letter had contained an agreement distinct from and independent of the authority, it would not render a stamp on it as a letter of attorney less requisite.

The court was unanimously of opinion, that *The Queen v. Kelk* was directly in point, and that the letter must be considered as a delegation of authority by which one person was empowered to do an act in the name of another. That was in fact an appointment of an attorney. It appeared from Co. Litt. 52 a, that for such a purpose the appointment may be either by deed or letter, and here it was in one of those forms. As to the argument, that it was an agreement coupled with an authority, the court thought it answered by the observation, that the letter contained no agreement save such as the law would imply from the authority conferred by it. All the justices considered, therefore, that the case fell within the general words of the Stamp Act; but *Erle, J.*, whilst concurring with the rest of the court, expressed himself anxious, in consequence of the very wide terms of the statute, to prevent this decision from being thought to extend beyond the particular case of one person authorising another to put his name to a bill of exchange. However desirable this may be, it is impossible not to perceive, that although the decision in its terms only goes to the extent to which the learned judge desires to limit it, it involves a principle far more comprehensive.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### METROPOLITAN BUILDINGS.

9 VICT. c. 5.

An Act to amend an Act for regulating the Construction and Use of Buildings in the Metropolis and its Neighbourhood. [24th March, 1846.]

*Appointment of an additional referee.*—Whereas an act was passed, 7 & 8 Vict. c. 84, intituled "An Act for regulating the Construction and the Use of Buildings in the Me-

<sup>c</sup> *Walker v. Remmett*, 15 Law Jour. N. S. 174, C. P.

tropolis and its Neighbourhood," whereby, amongst other provisions, one of her Majesty's Principal Secretaries of State was empowered to appoint two persons, being of the profession of an architect or surveyor, to be official referees of metropolitan buildings for the purposes of the said act, and from time to time, as he should think proper, to remove such official referees, and in their place to appoint other persons so qualified; and the Commissioners of her Majesty's Woods, Forests, Land Revenues, Works and Buildings were authorized to appoint a Registrar of Metropolitan Buildings, who should hold his office during the pleasure of the said Commissioners; and it was enacted, that the determination of such two official referees, or of one of them with the assent of the said registrar, as to all or any matters referred to them, should be binding on all parties to such reference, and that any matter required or permitted to be done by the official referees might be done by either of them with the assent of the said registrar, unless express provision to the contrary should be made, and if done by any one of them with such assent should be as valid and effectual as if done by both of them; and by the said act the said official referees were prohibited from acting as surveyors, and every person being or becoming commissioner, receiver, steward, or agent of any owner of houses within the limits of the act was disqualified from holding the office either of official referee or of registrar under the said act: And whereas the duties and qualifications for office of the registrar of metropolitan buildings are of a character wholly distinct from the duties and qualifications for office of the official referees, and it would conduce to the more satisfactory execution of the recited act if there were three official referees (all of them being of the profession of a surveyor or architect), and the acts and awards of such three official referees, or of any two of them, were made as valid and binding as if the same had been done or made under the authority of the recited act by the two official referees thereby authorized to be appointed, or by one of them with the assent of the said registrar; and for the purpose of obtaining persons duly qualified to discharge the functions of official referees without increase of charge to the public, or the localities comprised within the limits of the recited act, it is expedient to relax in manner hereinafter mentioned the prohibitions and disqualifications appertaining to the office of official referees under the said recited act: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall be lawful for one of her Majesty's principal Secretaries of state, and he is hereby empowered, at any time after the passing of this act, and from time to time, to appoint a person, being of the profession of an architect or surveyor, to be an official referee of metropolitan buildings, in addition to the official referees

authorized to be appointed by the recited act, and from time to time, as he shall think proper, to remove such additional official referee, and to appoint any other person, qualified as aforesaid, in his place; and every official referee to be appointed under the authority of this act shall make the same declaration of official fidelity, and have the same duties, powers, authority, and jurisdiction, and be subject to the same rules and regulations (save as hereinafter varied or relaxed,) as if the said recited act had authorized the appointment of three official referees, and the official referee appointed under the authority of this act had been appointed official referee under the authority of the recited act.

2. *Two official referees may act.*—And be it enacted, That all acts, matters, and things by the said recited act required, directed, or permitted to be done by the official referees of metropolitan buildings, or by one of such official referees with the assent of the registrar, may be done by the official referees appointed and to be appointed under the authority of the recited act and of this act, or by any two of them; and that the acts, certificates, awards, orders, and determinations of any two of the said official referees shall be as valid, binding, and effectual as if the same had been done, signed, made, or determined by all the said official referees; and the assent of the said registrar of metropolitan buildings shall not be required to give effect to the same; and the assent of the said registrar shall not render valid any act, certificate, award, order or determination done, signed, or made by one only of the said official referees which would not be valid without such assent.

3. *Official referees may act as surveyors with permission of Secretary of State, and disqualifications may be relaxed.*—*Special referees to be appointed in certain cases.*—And be it enacted, That, notwithstanding anything in the said recited act to the contrary contained, it shall be lawful for one of her Majesty's principal Secretaries of State, if and so long only as he shall think proper, by any writing under his hand, to permit and authorize any one or more of the persons who for the time being may hold the office of official referee to act as surveyor, either alone or with any partner, or by an agent; and no person shall be ineligible or disqualified from holding the office of official referee by reason of his continuing to act as a surveyor with such permission as aforesaid, or by reason of his being or becoming commissioner, receiver, steward, or agent for or on behalf of any owner of houses or land within the limits of the said recited act, provided the fact of such person being or becoming such commissioner, receiver, steward, or agent be notified to one of her Majesty's principal Secretaries of State, and licensed by him in writing, before such person be appointed or continue to act as official referee; but it shall not be lawful for any person holding the said office to act as official referee in the case of any building or matter in which he shall be employed as archi-

tect or surveyor, or where he shall be the commissioner, receiver, steward, or agent of any person interested in such building or matter; and if it shall happen that more than one of the said official referees shall be employed as architect or surveyor as to the same building or matter, or shall be the commissioner, receiver, steward, or agent of any person interested therein, or if any disagreement or difference of opinion shall arise between any two official referees who shall act as to such building or matter, not being employed as architect or surveyor, or as commissioner, receiver, steward, or agent of any person interested therein, it shall be lawful for the commissioners of her Majesty's woods, forests, land revenues, works, and buildings, from time to time, upon the report of the official referees or any one of them, or upon the application of any person interested in the matter in dispute, to authorize one or more competent persons, being of the profession of an architect or surveyor, to be special referees in respect of such particular building or matter, either in conjunction with the acting official referee or referees, or alone, as the case may require; and every special referee authorized by the said commissioners shall, as to the particular building or matter for which he is authorized, have the same power, authority, and duties as if he had been appointed an official referee under the authority and for the general purposes of the said recited act; and it shall be lawful for the said commissioners to assign to every such special referee such part of the remuneration of the official referee or referees who shall be disqualified as aforesaid from acting as to such particular building or matter, or otherwise to remunerate him as the said commissioners shall think fit.

4. *Offices vacant.*—And be it enacted, That if any official referee shall act as surveyor, either alone or with any partner, or by an agent, or as commissioner, receiver, steward, or agent for or on behalf of any owner of houses or land within the limits of the said recited act, without the licence and consent in writing of one of her Majesty's principal Secretaries of State, or shall continue to act as surveyor, either alone or with any partner, or by an agent, or to act as such commissioner, receiver, steward, or agent as aforesaid, after such licence and consent shall have been withdrawn or shall have expired, then he shall cease to be qualified to hold the office of official referee, and thereupon such office shall be vacant, without prejudice nevertheless to any acts done by him in his capacity of official referee so far as other persons are affected thereby.

5. *Salaries of official referees.*—And be it enacted, That it shall be lawful for her Majesty from time to time to grant such salaries for the remuneration of the said official referees respectively as her Majesty shall, as to each of them, be pleased to appoint, not exceeding in the whole for the three referees the sum of 2,000*l.* per annum.

6. *Contributions to be paid to the consolidated*

*fund, and salaries paid thereout.*—And whereas, for the purpose of providing for the payment of a portion of the salaries of the official referees and registrar under the said recited act, it was by the said act enacted, that the lord mayor and aldermen of the city of London should direct the chamberlain of the said city, and the justices of the peace for the several counties of Middlesex, Surrey, and Kent should direct the treasurer of such respective counties, to pay, by two half-yearly payments in the months of June and December in every year, to or into the hands of the cashier of the commissioners of works and buildings, on account of the said official referees and of the said registrar, the several sums of money therein mentioned as and by way of contribution to such salaries, and it was enacted, that the balance of such salaries should be payable and paid out of the consolidated fund of the United Kingdom: And whereas such salaries are by the said act directed to be paid quarterly, and the contributions towards payment of the same being payable half-yearly it has not been practicable to pay such salaries as directed by the said act, and it has been found inconvenient to pay the same in part out of monies contributed by the said city and counties respectively, and in part out of the consolidated fund of the united kingdom; be it therefore enacted, That the several sums of money which under the said recited act are payable by the chamberlain of the city of London, and the treasurer of the counties of Middlesex, Surrey, and Kent respectively, to the cashier of the commissioners of works and buildings on account of the said official referees and of the said registrar, and all arrears and future payments thereof, shall, instead of being paid to such cashier on such account as aforesaid, be payable and paid into the receipt of her Majesty's Exchequer, and carried to the account of the consolidated fund of the United Kingdom of Great Britain and Ireland; and the salaries of the official referees and registrar of metropolitan buildings for the time being, and all arrears thereof, shall be paid wholly out of the said consolidated fund by the lord high treasurer or the commissioners of her Majesty's treasury for the time being; and such salaries shall accrue from day to day, and be paid quarterly on the 1st day of January, the 1st day of April, the 1st day of July, and the 1st day of October in every year; and every official referee and registrar shall be entitled to a proportionate part of his salary from the day of his appointment to the next succeeding quarter day of payment, and from the last quarter day of payment preceding his death, discharge from or ceasing to hold the office of official referee or registrar, (as the case may be,) to the day of his death, discharge, or ceasing to hold such office.

7. *Public act.*—And be it enacted, That this act shall be deemed to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded.

8. *Alteration of act.*—And be it enacted

That this act may be amended or repealed by any act to be passed in the present session of parliament.

## CORRESPONDING SOCIETIES AND LECTURES.

9 &amp; 10 VICT. c. 39.

An Act to amend the Laws relating to Corresponding Societies and the licensing of Lecture Rooms. [27th July, 1846.]

*Proceedings under recited acts shall not be commenced unless in the name of the law officers of the crown.*—Whereas by an act passed in the 39 G. 3. c. 79, intituled "An Act for the more effectual Suppression of Societies established for seditious and treasonable Purposes, and for better preventing treasonable and seditious Practices," and by an act passed in the 57 G. 3. c. 19, intituled "An Act for the more effectually preventing seditious Meetings and Assemblies," certain offences are created, and certain penalties are attached to the commission thereof: And whereas the provisions of the said acts have given occasion to vexatious proceedings by common informers: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act it shall not be lawful for any person or persons to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information in any of her Majesty's courts, or before any justice or justices of the peace, against any person or persons, for the recovery of any fine or forfeiture made or incurred or which may hereafter be incurred under the provisions of the recited acts or either of them, unless the same be commenced, prosecuted, entered, or filed in the name of her Majesty's Attorney-General or Solicitor-General in England, or her Majesty's Advocate in Scotland; and every action, bill, plaint, or information which shall be commenced, prosecuted, entered, or filed in the name or names of any other person or persons than is in that behalf before-mentioned, and every proceeding thereupon had, shall be null and void to all intents and purposes.

2. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

## MEDICAL JURISPRUDENCE.

## SPECULATIVE CHEMICAL TESTIMONY.

THE following case, tried at Guildford on the 1st instant, shows the necessity of great caution in receiving the opinions of medical men as conclusive evidence:—

A young woman was indicted for the murder of an infant by administering vitriol to it, and

the prisoner's defence rested entirely upon this question:—Whether sulphuric acid, sugar and water mixed together in certain proportions, and aniseed, sugar and water mixed together in like proportions, would in point of colour a few minutes afterward, produce similar or somewhat similar appearance?

The girl's life undoubtedly depended upon the result. It was the only link wanting to establish her complete defence. If the same result as to appearance followed upon the mixing both sets of ingredients, it established the girl's innocence. If a palpably different colour and appearance was the result, it went very far in establishing the presumption of her guilt.

The question was put to an eminent surgeon, and his answer was, that they would produce similar or nearly similar appearances. After he had given his evidence, and whilst the trial was proceeding, a doubt arising in his mind, he left the court with one of the most distinguished chemists of the present day, also a witness at the trial, and they together made the experiment. They returned into court, and the surgeon, in a state of excitement, requested the judge to allow him to correct his testimony, for he found upon trial the two mixtures produced very different appearances, and he held up in court two wine-glasses, one of the aniseed mixture which was of a *yellow* colour, the other with the sulphuric acid mixture, which was *intensely black*.

He was then asked by the counsel for the prisoner in what order he mixed the ingredients, producing the black appearance, and he replied, the sulphuric acid first, then the sugar, then the water. He was then requested to repeat the experiment in court, putting first the sulphuric acid, then the water, and then the sugar, which he did. What was the consequence? Why, instead of turning *black* it remained of a *yellow colour*, and as nearly as possible resembled the mixture of the aniseed, &c.

Had the experiment not have been repeated in court in the order of mixing the ingredients in which it was there repeated, that innocent girl must have been hanged!

The quantity experimented with was about a teaspoonful of sulphuric acid to two of water, and a small piece of sugar.

## THE LAW STUDENT.

No. 6.

## LEGAL EDUCATION AT THE INNS OF COURT.

(From the *Law Review*.)

SINCE our statement of the proceedings relating to Legal Education in the Middle Temple on the 16th January, reported in our number for the 24th of that month, the following measures have been adopted:—

Committees have been severally appointed by the Inns of Court to consider and report on this subject. At a meeting on the 11th of February last, the following suggestions were

made by Mr. Bethell for their consideration :—

"1. That four readerships be established in addition to the readership on jurisprudence and the civil law already established by the Middle Temple;—namely, a reader on constitutional and criminal law; a reader on the law of real property; a reader on the law of personal property and commercial law; and a reader on equity jurisprudence as administered in the Court of Chancery. Of these it is suggested that the reader on the law of real property be founded and endowed by the four societies conjointly; and the three other chairs by Lincoln's Inn, the Inner Temple, and Gray's Inn.

"2. That the lectures of the several readers do commence in Michaelmas Term next.

"3. That a standing committee or council be established, to consist of twelve members: three to be nominated by each of the four Inns of Court; of whom five shall be a quorum, and four go out of office annually. To this committee shall be intrusted the duty of making all such regulations as shall be necessary for completing the details of several measures which are hereby recommended.

"4. That the lectures of the several readers shall be open to the students and barristers of all the societies, subject to the payment of such terminal fees to the several readers as the standing committee shall direct.

"5. That a public examination shall be established, to be held three times a year, for the examination of all such students as shall be desirous of submitting thereto previously to being called to the bar: and such examination shall be conducted by the five readers; and a standard of merit, as the condition of being entitled to the honours to be conferred and receiving the exhibitions to be distributed, shall be fixed by the committee; to which, if no student shall attain, no honour shall be awarded, nor shall any exhibition be adjudged; but the names of all examinands who shall rise above the said standard of merit, shall be ranked in the order and according to the decrees of their respective attainments.

"6. That the examinations be held three times in every year; namely, Hilary Term, Trinity Term, and Michaelmas Term.

"7. That, as the examinations are intended solely for such students as are candidates for honours and rewards, no student shall be admitted as an examinand who shall not have diligently attended the lectures of three of the readers during one year; and of which readers, one shall be the reader on the law of real property.

"8. That from and after Michaelmas Term, 1847, no student shall be eligible to be called to the bar who shall not have attended during one whole year the lectures of any two of the readers; of which, the reader on real property shall be one.

"9. That every student who shall have attended during one whole year the lectures of any two of the five readers (the reader on real property law being one), shall have the same

privileges in point of admission to the bar as are now allowed by any of the societies in favour of graduates of the English universities.

"10. That exhibitions be founded by the several societies of Lincoln's Inn, the Inner Temple, and Gray's Inn, of the same number and amount as have been already established by the Middle Temple; and as there is reason to hope that a ninth exhibition may be added, it is trusted that the societies will be in a condition to award three exhibitions of one hundred guineas each at every one of the three public examinations, if a fitting standard of merit shall be attained to.

"11. That every means be adopted for giving honourable notoriety to the names of those students who shall be deemed worthy of honours and rewards at each public examination; and that every encouragement be held out to the students to induce them to submit to the examinations.

"12. That the standing council shall have power of granting dispensation to any students who shall have been prevented by inevitable accident from complying in all respects with the regulations as to attendance, &c., which shall be established."

These suggestions formed the basis of the discussion on the subject which subsequently ensued; and we understand that deputations from each committee consisting of three members of each Inn, (the treasurer of each society being one), met at the Inner Temple, and ultimately the following result was agreed to by the deputations, and was subsequently approved by the committees :—

"Minutes of the result of the conferences of the deputations from the committees of each of the Inns of Court on the subject of Legal Education as approved the 3rd of June, 1846.

"The deputations from the committees appointed by the several Inns of Court to consider the subject of legal education, have communicated together, and are of opinion that the following propositions should be offered for adoption to their respective societies.

"That it is expedient to institute rewards, or honours, or both, by way of encouragement to students who may be willing to undergo examinations.

"That for the purpose of preparing the students for such examinations, there should be established four lectureships in addition to that on civil law and general jurisprudence already established by the Middle Temple.

"That the subjects of the additional lectures should be :—

"1. Constitutional law, criminal and other crown law.

"2. The law of real property and conveying, devises and bequests.

"3. Those branches of the common law which are not included in the two last heads.

"4. Equitable jurisprudence as administered in the Court of Chancery.

"That the lectureship for constitutional law

criminal and other crown law, should be maintained at the joint expense of the four societies.

"That the lectureship of civil law and general jurisprudence, should be maintained as now at the sole expense of the Middle Temple.

"And that the other three lectureships should be maintained at the expense of the three other societies respectively,—one for each as shall be hereafter arranged among themselves.

"That no examination should be required of any student as a condition precedent to his call to the bar.

"That every student should be required, as a condition precedent of his call to the bar, to produce a certificate of his having attended two of the courses of lectures, the selection to be determined by himself."

#### VACATION READING.

*To the Editor of the Legal Observer.*

MR. EDITOR,—I believe that I express the sentiments of many a lawyer when I state, that in early life several vacations were worse than wasted, by a total abstinence of legal reading. As many junior members of the profession will be on the wing in search of fresh air and recreation, allow me to assure them, that they will not interfere much with the pursuits of either, if they resolutely devote one or two hours each morning to what I may call *legal classics*. They will contribute to a certain dignity and robustness of mind, upon which a superstructure of accomplishments and manly pursuits will rest the better, all through life.

Should any of my younger friends be proceeding to the continent, they will do well to refresh themselves daily with a portion of Story's *Conflict of Laws*, Savigny, or Justinian. If the vacation weeks are to be spent in Great Britain, they will find much amusement in Manwood's *Forest Laws*, as illustrative of early English manners. I may be permitted to add, that apart from their legal worth, the writings of Littleton, Coke, and Plowden, will furnish much amusement to the English gentleman in vacation. The works of Shakspeare, and the author of *Hudibras*, will also suggest (as is well known) many points of legal inquiry and criticism.

C. C.

*Lincoln's Inn, August, 1846.*

#### PROCEEDINGS OF LAW SOCIETIES.

##### THE LAW ASSOCIATION.

THE annual general meeting of this benevolent society, took place on the 12th May in the arbitration room of the Incorporated Law Society. The chair was taken by Mr. George Herbert Kinderley.

The following report of the board of directors was read:—

"The directors, in compliance with the practice of former years, have to report to the members at large the transactions of the association since the last annual general court.

"The annexed accounts will explain the mode in which the income of the association has been expended; the allowance to the primary class of applicants being 860*l.*, while that to the secondary class amounts to 99*l.* 10*s.*, part of the 150*l.* voted at the last general meeting.

"Of the first description, one new case has come before the board during the year; a case which, in all its circumstances, fully justifies the views of those who planned the formation of this charity.

"To the secondary class a case has been added, which confirms the propriety of the distinction drawn by the 34th bye-law, between the widows and families of non-members who have never contributed to the funds, and of those who, subscribing for a time, have lost the ability to continue the subscription, and, consequently, the benefits attaching to the families of deceased members. The case in question is of the latter description.

"In pursuance of the recommendation of the directors contained in their report, presented last year, the annual general court voted a larger grant than had for some previous time been usual, though less than was customary in former years, for distribution among the secondary, or non-members class, and of this sum it will be seen that 99*l.* 10*s.* have been expended; but it should be added that as some of the applicants have received only half a year's payment, the full early allowances, would amount to 116*l.*

"In alluding to this portion of the outlay, the directors deem it right to draw attention to the mode in which it has been made.

"It will be observed, that the tendency of the bye-laws passed at the last annual meeting, is to render permanent the allowances to non-members' families; whereas, hitherto, those allowances, unlike the payments made to the primary class, had been considered in the light of casual relief.

"The sum of 116*l.* may therefore be viewed as a fixed charge upon the funds, and it will be necessary for the members, on the present occasion, to consider what additional sum beyond this fixed charge should be placed at the discretion of the directors, to enable them to deal with the cases, casual or otherwise, which may arise during the succeeding year.

"It may be added, that the allowances made during the past year to this class have been founded on the report of the same committee who proposed the bye-laws regulating this particular description of relief; and the directors have great satisfaction in being enabled to state that there appears every reason, from the result of the last year's experience, to believe that the substitution of small periodical and defined payments for the casual and fluctuating assistance heretofore granted to the widows and families of non-members, will prove far more beneficial



and acceptable to the recipients of relief, and free from any injurious effect upon the funds or the interests of the association.

"In recording the death of the late John Teesdale, Esq., one of the treasurers, the directors, knowing how universal has been the regret felt by the profession at his loss, will merely advert to his unceasing and effectual exertions on behalf of this association. To his unremitting energies the society is indebted for a large number of the recent life subscriptions; and, in deploring his death, the directors can only hope that his benevolent zeal will be imitated by other members of the society."

The following are the patrons and officers of the Society:—

*President.*—The Right Hon. Lord Lyndhurst.

*Vice-presidents.*—The Right Hon. the Vice-Chancellor of England, the Right Hon. the Vice-Chancellor Knight Bruce, the Right Hon. the Vice-Chancellor Wigram, the Right Hon. Sir J. B. Bosanquet.

*Treasurers.*—George Herbert Kinderley, Augustus Warren.

*Directors.*—C. T. Abbott, Benjamin Austen, Keith Barnes, R. R. Bayley, James Beaumont, E. S. Bigg, John Boodle, T. H. Bothamley, George Brace, James Burchell, T. J. Burgoyne, James Burton, Thomas Clarke, Charles Clarke, John Clayton, Charles Few, H. R. Freshfield, R. H. Giraud, Bryan Holme, F. B. Hookey, James Hore, J. O. Jones, H. S. Lawford, William Lowe, John Philpot, Charles Ranken, J. A. Simpson, Meaburn Tatham, J. W. Thrupp, W. Tooke, C. J. Whishaw, John Young.

*Trustees.*—J. W. Freshfield, William S. Jones, J. W. White.

*Secretary.*—John Murray, 7, Whitehall-place.

## OBSERVATIONS OF THE LATE MR. J. W. SMITH ON CODIFICATION.

THE Mercantile Law of England is an edifice erected by the merchant, with comparatively little assistance either from the courts or the legislature.

The former have, in very many instances, only impressed with a judicial sanction, or deduced proper and reasonable consequences from those regulations which the experience of the trader, whether borrowing from foreigners or inventing himself, had already adopted as the most convenient.\* The latter, wisely reflect-

ing, that commercial men are notoriously the best judges of their own interests, have interfered as little as possible with their avocations, have shackled trade with few of those formalities and restrictions which are mischievous, if only on account of the waste of the time occupied in complying with them. The Mercantile Law of England is, perhaps, of all laws in the world, the most completely the offspring of usage and convenience, the least shackled by legislative regulations. Thus, the performance of one of the most obvious parts of the duty of a merchant, and one which the laws of most other countries enforce by many and anxious provisions, viz., the keeping a correct account of his transactions,<sup>b</sup> is left by us to be enforced solely by public opinion, and by the dread of that reproach and loss of credit which would follow the detection of any gross irregularity.

It is, perhaps, in consequence of this that we find such high and peculiar sentiments of commercial honour prevalent among English merchants.

When trade began to flourish in this country, those occupied about it soon discovered that the law had provided but few rules for the guidance of their transactions, and that it was therefore necessary, that they should themselves adopt some regulations for their own government. Thus, they in early times, erected a sort of mercantile republic, the observance of whose code was ensured, less by the law of the land than by the force of opinion and the dread of censure. The law is now indeed more copious, but the spirit which had been then called forth has ever since continued to prevaile our mercantile community, and has conducted to a more scrupulous observance of good faith and punctuality than could have ever been enforced even by the most anxious efforts of the legislature.

These, and such as these, are the reflections which have rendered the author of this work exceedingly averse from any idea of reducing our commercial system into a code, by which the energies of the mercantile community would, he apprehends, be shackled, and prevented from operating, as they now most usefully do, upon the law and working out its improvement without assistance from the legislature.

<sup>b</sup> See the French Code de Commerce, liv. 1, tit. 2, which, after describing several books which every tradesman is to keep, besides an inventory of his whole property, proceeds in art. 11: "Les livres dont la tenue est ordonnée par les art. cidessus, seront cotés paraphés et visés soit par un des juges des tribunaux de commerce, soit par le maire ou un adjoint dans la forme ordinaire et sans frais." This kind of inquisition must be a great check on commercial enterprise. Again, in France many branches of agency which, among us, are open to the competition of every individual, are monopolised by persons nominated by the government, entitled "Agens de Change et Courtiers." Code de Commerce, liv. 1, tit. 5.

\* Thus the earliest English dissertations on commercial law are collections of usages written by merchants, who, from the practical knowledge of the regulations in use among their own class, had become better commercial lawyers than the denizens of Westminster Hall. So too, it was at one time the practice, when a disputed point of commercial law arose, to receive evidence of the custom of merchants with regard to it, and then leave it to the decision of the jury.

A *criminal code* would be of great utility, for the rules of criminal law ought to be not only definite but inflexible, incapable of extension, save by the superior power of the state.

The whole of our remedial system, including the formalities of actions at law and suits in equity and in the Ecclesiastical and Admiralty Courts, would be a very proper subject for codification, for it is a collection of arbitrary rules, which are then best when most accessible.

The codification of the law of *real property* is not worth seeking for. Its principles and practice are so abstruse, that no code would render them intelligible to the public, while, by the profession, they are already understood sufficiently. But the codification of our mercantile law would be a national evil. It would destroy the singular and fortunate plasticity of a system whose rules hitherto have been, and always ought to be made, by the merchant, and dictated by his exigencies.

## REPORT OF SELECT COMMITTEE ON PRIVATE BILLS.

A **LARGE** proportion of our readers being more or less engaged in soliciting or advocating private bills in parliament, we shall extract for their information some passages from the Report, dated the 3rd August, of the select committee of the House of Commons on the subject of these bills.

The reports commence with some introductory observations on the bills specially referred to the committee regarding water-works, draining, paving, and other town improvements, and thus proceeds :—

“Your committee, however, while engaged in considering the matters specially referred to them, had their attention forcibly drawn to the fact, that most of the defects in the present mode of private legislation are not peculiar to those classes of bills, but are general in their application to the whole system ; and the difficulty of considering the defects of one or more such classes separately from the others, became so apparent, that your committee, instead of confining themselves to a limited view of the subject, found it necessary to extend their inquiry to the whole system of private legislation, with respect to which they would submit the following observations and recommendations to the house.

“They would in the first place remark, that under the present system, the expenses of obtaining the most necessary or desirable private bill are grievously and needlessly heavy, while the great mass of these so-called private bills (excluding those which are in their nature personal, such as divorce and estate bills) materially affect public interests, and are, although local, essentially public bills.

“That with respect to these local bills, the chief imperfection of the present system of legislation arises from the fact that no provision is made for furnishing the committees which sit upon them with complete and trustworthy information, either with regard to the local evils requiring remedies, or with regard to the bearing which the provisions proposed in them may have upon the general law of the country.

“As the public are not represented before the committee by any competent or duly qualified person, the committee, when the bill is unopposed, are wholly dependent for information on the interested representations of the promoters ; and where it is opposed, they have, in addition, only the representations of parties not in the least more likely to be disinterested than the promoters ; inasmuch as the expenses of opposition are such as to deter all parties from venturing to undertake it, except those whose interests are directly affected by the project, and who are also possessed of considerable means. The consequence is that, under the present system, the interests of the public at large, who have neither the means of obtaining detailed information as to the proposed measures, nor the means of defraying the expenses of opposition, are often greatly prejudiced by local acts. That besides this, there are moreover often introduced into local bills provisions of the most objectionable nature, some varying or interfering with the general statute or common law of the country ; some, though ordinary in their nature, yet of a perplexing and needless diversity in form ; and finally, some so contradictory and mutually discordant as to render their enforcement impossible, and to make the law doubtful and embarrassing even to those who are professionally versed in it.

“Influenced by these considerations, your committee have come to the following resolutions :—

1. As to *Public General Acts*, the committee report as follows :—

“Your committee are of opinion that it is desirable, in cases in which only ordinary powers are sought, that means should be afforded to the parties of carrying their projects into execution, under the authority and supervision of one of the public boards or departments, without the necessity of applying to parliament.

“That for this purpose public general acts should be passed on the several subjects of sewage and waterworks, paving, lighting, police and watching, markets, and every other class of private bills, excluding those which are in their nature personal, on a principle similar to that which has been already carried into effect by the 3 & 4 W. 4, c. 90, for lighting in England ; by the 9 Geo. 4, c. 82, for lighting, &c., in Ireland ; and by the 3 & 4 W. 4, c. 46, for police in Scotland.

“That every such public general act should set forth the conditions on which any corporation, parish, company, or other parties may be

invested with the powers conferred by such general act, and should also specify the public board or department of the government under whose authority such powers are to be conferred; such boards and departments being the Home Office, the Board of Trade, the Admiralty, the Commissioners of Woods and Forests, the Inclosure Commissioners, or others, as the case may be.

"That amongst the provisions so to be specified in each public general act, the following seem to be expedient, namely,

"That a memorial, for authority to put in force the powers of the act, be presented to the proper board or department.

"That such memorial shall state the objects of the promoters; the public utility of the measure; the local situation of the work; the estimated expense; the means by which the necessary funds are to be raised, and the periods over which the charges or repayments are to be distributed.

"That, within a limited time, similar information on these points shall be given to all parties interested, and to the neighbourhood, in the manner required by the standing orders in the case of private bills; and that a printed copy of such memorial, together with plans and sections, estimates, subscription contracts, and all other appropriate information shall, in a similar manner, be lodged at the office of some local functionary; and that duplicate copies of the same documents be likewise lodged with the department at the same time.

"That all parties interested shall be permitted, within a given time, to lodge for public inspection, in the office of the local functionary, written suggestions, objections, or amendments to the measure proposed, which shall in due time be forwarded to the department.

"That the department shall thereupon depute one or more qualified inspectors (at the expense of the promoters) to proceed to the locality, and there, after due notice,—

"1st. To inquire in open court, whether the provisions of the public general act as to notices, deposit of documents, and all other legal requirements, have been duly complied with.

"2ndly. To inquire as to the merits of the case, both by evidence in open court, and by personal inspection;

"And then to make a written report on both points to the department.

"That the department, exercising its discretion on both the above points, shall thereupon determine whether authority shall be given for the exercise of the powers of the act; and if so, upon what terms and conditions; and that such authority be conferred by a legal document, according to a form to be appended to the act; but that in any case in which private property may appear to the department to be seriously interfered with, such authority shall be withheld, and the parties be left to the ordinary mode of proceeding by application to parliament.

2. The report next proceeds particularly to

consider the practice relating to *Private Bills*, and the following are the conclusions the committee have come to:—

"That, in the opinion of the committee, it would be desirable that similar proceedings should be adopted in the case of all private bills relating to the above-mentioned classes of subjects; by requiring,—

"That all applications for such bills should, previously to the session of parliament, be referred to the proper board or department, as above; and,

"That such department should appoint one or more inspectors to proceed to the spot to take evidence, both as to compliance with the standing orders and upon the merits of the measure, in the manner above recommended, and to make a separate report upon each of these points; such reports to be referred respectively to the committee on standing orders and to the committee on the bill. If, as would be most desirable, the House of Lords should think proper to adopt a similar course of proceeding, the same inspectors might report to both houses.

"That the committee are of opinion that such local investigation would be of incalculable advantage,—

"1st. In diminishing the great expenses now incurred by parties for the attendance of agents and witnesses in London.

"2ndly. In saving a large portion of the time of members of the house, now consumed in the sub-committees on petitions for private bills, and in the committees on bills; and

"3rdly. In supplying to committees on bills that local and trustworthy information which under the present system appears to be so much wanted.

"If, however, the house should not be prepared at the present advanced period of the session, for the immediate adoption of the system recommended, involving, as it would, the most extensive changes in the standing orders, the committee would urge the subject on the early attention of the house in the next session of parliament, when its deliberations on this point might be materially assisted by having under its consideration the public general bills above mentioned, which they hope will be prepared during the recess.

"That, with the view of an immediate saving of time and expense in the proof of standing orders, the committee recommend that, in the ensuing session of parliament, the proof of standing orders now taken before the sub-committees shall be taken before an officer, or officers, to be appointed by the speaker, who shall commence his sittings for this purpose on the 1st of January, 1847; that every petition for a bill, with a copy of the bill annexed, shall be lodged in the Private Bill Office on or before the 24th of December; and that no bill be permitted to be read a first time until the report of such officer shall have been presented to the house; and further, that to facilitate this object, all plans, &c., shall be deposited, and

all applications shall be made to landowners and occupiers on or before the 30th November. It has been suggested that the officers above mentioned might hold their sittings in other places besides London.

"That in case such report should allege compliance with the standing orders, it shall be final; and in case it should allege non-compliance, it shall be referred to the committee on standing orders, as at present; and the officer by whom the report was made shall attend before the committee, for the purpose of furnishing them with any additional information.

"That, in case such officer shall feel doubts as to the due construction of any standing order in its application to a particular case, he shall make a special report of the facts; which report shall be referred to the committee on standing orders, who, after hearing the opinion of such officer, as well as the arguments of the agents, on the point of construction, shall determine whether or not the standing orders have been complied with; and shall either return the report, with their decision, to the house, or shall proceed to consider the question of dispensing with the standing orders, as the case may be.

3. The committee next proceed to consider the subject of *Consolidation Acts*, and say,

"That great evil results from the want of a strict uniformity of legislation with reference to all private bills, but more especially with reference to police bills and bills for the improvement of towns.

"That for the purpose of remedying this evil, it is expedient that acts be passed upon the same principle as those passed in the last session, called the Lands Clauses Consolidation Act, the Companies Clauses Consolidation Act, and the Railway Clauses Consolidation Acts.

"That such acts be prepared during the recess, to effect the following objects:

"Police and watching.

"Waterworks and sewage.

"Lighting.

"Improvement of towns and regulation of buildings and streets and roads.

"Markets and fairs.

"Cemeteries.

"Bridges and ferries.

"Harbours, docks, ports, piers, and quays.

"Canals, rivers, and navigation.

"That there be a schedule attached to each of these acts prescribing the form of private bill, by which any place or party may be put under the provisions (in whole or in part) of any one or more of the above-named acts.

"That all private bills be drawn according to such form, except where the circumstances of the case require a deviation from it. That in all such cases the cause of such deviation be inserted in the preamble; and that it be the duty of the committee upon the bill to decide and report specially upon the necessity of such deviation.

"That in the notices of any applications to

parliament for a bill, wherein it is proposed to make such deviation, the intention shall be inserted in such notices.

"That as doubts and uncertainty, as to the provisions of the law, are caused by a multiplicity of acts for the same object in any locality, it is desirable that when any corporation, parish, company, or other parties, invested with the powers, or acting under the provisions of any existing local act or acts, shall apply to parliament for a new bill, with new and amended powers and provisions, having reference to the same matters, it shall be imperative on them to send their new bill, together with all previous existing acts on the same subject in force within the same corporation, parish, or district, to the board of trade, who shall report their opinion to the house whether the new bill shall be allowed to proceed, or whether all the existing acts shall be repealed, and the powers and provisions of such repealed acts, together with the new or amended powers and provisions sought for, should be consolidated, to the intent that only one local act shall be in force at the same time, in the same place, with reference to the same object.

4. Our last extract shall be on the important matter of the *Taxation of Costs*. The committee observe—

"That although the fees payable to parliament on local and private bills are fixed and known, yet the charges of solicitors and agents for promoting or opposing such bills are very uncertain and often very extravagant: and, as there is no scale established by parliament for such charges, it is desirable, for the protection of the public, that a proper taxing-officer, such as is attached to courts of justice, should be appointed under the authority of the speaker, and a scale of taxation be authorized and published by him for the guidance of all parties promoting or opposing local and private bills.

"That the taxing-officer shall present to the house, at the commencement of each session, an account of the total amount of the expenses for promoting or opposing of each bill taxed and sanctioned by him during the preceding session, distinguishing the amount paid as fees on each bill to each of the houses of parliament, the amount for witnesses and other expenses, and for professional services."

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Courts of Equity.

#### V. PRACTICE.

##### AFFIDAVIT.

1. *Inadmissible against answer*.—The plaintiff's title to the relief prayed, depended upon A. (whose administrator he was) having survived B. The answer stated that the defendant did not know and could not set forth, whether A. did survive B., or whether A. was living or

dead. The plaintiff in support of a motion for a receiver and for payment into court of money in the defendant's hands, produced an affidavit to prove, that A. died after B., and to prove also, a letter alleged to have been written by the defendant to the plaintiff's solicitor, and to contain an admission of the fact. The answer denied that the defendant wrote the letter, but added, that it might have been written by some person in the habit of being about him: *Held*, that the affidavit was not admissible. *Edwards v. Jones*, 13 Sim. 632.

## AMENDMENTS.

1. Notwithstanding a defendant has notice of an order to amend and for him to answer the amendments and exceptions at the same time, he may file his answer at any time before the order is served. *Pariente v. Bensusan*, 13 Sim. 522.

2. While the Attorney-General is the plaintiff in a suit, it is sufficient that the affidavit required by the 69th Order, to found a special application to amend should be made by the solicitor, and it must be made to the Master. *Attorney-General v. Wakeman*, 32 L. O. 351.

## ANSWER.

See *Affidavit*.

## APPEARANCE.

*Qualified*.—Motion by a defendant, who had been served with a copy of the bill under the 23rd Order of August, 1841, for leave to enter an appearance without being bound by the proceedings which had taken place in the cause, on the ground that she ought to have been made a party by subpoena, *refused*; for if the defendant was not a party within the 23rd Order, she was not bound by the proceedings. *Boreham v. Bignall*, 4 Hare, 633.

## BILL.

1. *Service*.—Bill filed in July, application on the 4th of December for leave to serve copy bill. Motion refused on account of the unexplained delay. *Horry v. Calder*, 7 Bea. 585.

2. Liberty given, after great delay, to serve copy bill, the omission to apply earlier having been accidental, and not for delay. *Bell v. Hastings*, 7 Bea. 592.

3. *Examined copy*.—Held, on a motion for leave to enter a memorandum of service of copy bill, that it is not necessary for plaintiff to swear that he examined the copy either with the office-copy or the record. An affidavit that he believes it to be a true copy is sufficient. *Lagh v. Legh*, 13 Sim. 590.

4. *23rd Order of August, 1841*.—If a bill, of which a copy has been served under this order, is amended after service, a new copy must be served. *Thomas v. Selby*, 32 L. O. 227.

And see *Service*.

## CREDITOR'S SUIT.

*Preliminary inquiries*.—The Vice-Chancellor *Wigram* refused to direct preliminary inquiries, under the 5th Order of the 9th of May, 1839, in a creditor's suit, where the plaintiff was both

creditor and administrator of the intestate, and the bill was filed against the infant heir at law, and sought to charge the real estate with the debts which the personal estate was insufficient to pay. *Leaden v. Lewin*, 4 Hare, 634.

## CONTEMPT.

1. *Plaintiff's death*.—A defendant in contempt ordered to be discharged from prison on his own motion, the sole plaintiff being dead. *Terrell v. Souch*, 4 Hare, 535.

2. *Proceedings during contempt*.—A party in contempt for nonpayment of costs, and being served with an order nisi to confirm a report may, notwithstanding his contempt, take exceptions to the report, and draw up, pass, and enter an order to set down the exceptions; and may also present, and be heard upon, his petition to discharge the report as irregular, and for liberty to open the accounts allowed in former reports, on the ground that items therein were allowed in the absence of the petitioner, and while the suit was abated. *Morrison v. Morrison*, 4 Hare, 590.

Cases cited in the judgment: *Wilson v. Bates*, 5 Myl. & Cr. 197; *King v. Bryant*, *id.* 191; *Wilson v. Metcalfe*, M. S., cited 1 Dan. Ch. 657.

3. *Personal service*.—Before an attachment can issue for the nonperformance of a decree or order of the court, personal service of such decree or order must be effected. *Whitler v. Aylward*; *In re Fitton*, 1 Dru. 1.

4. *Order of committal*.—*Sealing of Warrant*.—An order of committal for contempt contains a sufficient adjudication of the contempt having been committed, if such act can be inferred from recitals of it in the order; but it is more proper to aver the contempt distinctly. Such order may contain a condition that the party committed shall pay the taxed costs of committal and discharge; although it is most usual to defer the question of costs until the party applies to be discharged. A warrant under the hand and seal of a judge of the court of review for the committal of a party in contempt, must have affixed to it the seal of the courts; and therefore the party arrested under such warrant, not so sealed, is entitled to be discharged unconditionally. *Re Van Sandem*, 32 L. O. 34.

And see *Sequestration*.

## CONVEYANCE.

See *Infant*, 3.

## DECREE.

See *Receiver*, 1; *Sale*, 1, 2.

## DRAINING SETTLED ESTATES.

A court of equity is *functus officio* when it has confirmed the Master's report sanctioning the draining of a settled estate under 4 & 5 Vict. c. 55. What remains to be done under the act is to be done by the Master, and not by the court. *Ex parte Mills*, 13 Sim. 591.

Case cited in the judgment: *Stanhope v. Stanhope*, 3 Bea. 547.

## DISSOLVING INJUNCTION.

See *Injunction*, 1, 2.

## EXCEPTIONS.

See *Injunction*, 3.

## GUARDIAN.

On an application to appoint a solicitor guardian *ad litem* to a defendant of unsound mind, not so found by inquisition, the court required to be first satisfied that no relative would undertake the defence. *Moore v. Platel*, 7 Bea. 583. See *Needham v. Smith*, 6 Bea. 130 n. a.; *Mackeverakin v. Cort*, 7 Bea. 347.

And see *Infant*, 1.

## HEARING.

*Setting down cause.*—A bill of revivor and supplement was filed to bring new trustees before the court. It was supplemental as to the trustees, but a bill of revivor as regarded the other defendants. *Held*, that it was only necessary to set down the bill to be heard as against the new trustee. *Hussey v. Divett*, 7 Bea. 499.

## INFANT.

1. *Guardian.*—A court of equity will refer it to the Master to approve of a guardian for an infant, notwithstanding the infant, being fourteen years of age and entitled to real estate, has, by deed, appointed a guardian for himself. *Cokam v. Cokam*, 13 Sim. 639.

2. *Mortgagee.*—*Statute 1 W. 4, c. 60.*—Form of order upon an application for an infant mortgagee to convey under the statute 1 W. 4, c. 60, s. 6. *In re Haldiday*, 1 Dru. 3.

3. *Construction of 11 G. 4, & 1 W. 4, c. 36.*—The court has no power to order a master in chancery to execute a conveyance for an infant who has refused to obey an order of the court for executing such conveyance, although an attachment may have been issued against him; unless the case can be brought within one of Sir Edward Sugden's acts. *Potts v. Dutton*, 31 L. O. 135.

## INJUNCTION.

1. *Dissolving common injunction.*—The common injunction against several defendants, may be dissolved as to some, before all have answered, and the proper course of proceeding for that purpose is, for those who have answered to obtain an order *nisi*, as of course. *Lewis v. Smith*, 7 Beav. 470.

Cases cited in the judgment: *Joseph v. Doubleday*, 1 Ves. & B. 497; *Naylor v. Middleton*, 2 Mad. 131; *Todd v. Diamor*, 2 Sim. & Stu. 477; *Imperial Gas Light Company v. Clarke*, Young, 580.

2. *Motion to dissolve.*—*Showing cause.*—Upon a motion made on the last seal after Trinity Term, for an order absolute to dissolve the common injunction, the plaintiff will not be allowed until the next motion day to show cause on the merits; but the court will appoint an early day in the vacation for that purpose. *Stagg v. Brown*, 7 Beav. 513. See *Rew v. Dixon*, 2 Madd. 258; *Fielding v. Capes*, 4

Mad. 393; *Lane v. Barton*, 1 Phil. 363; *Bordinave v. Wadson*, 1 Coll. 432.

3. *Exceptions.*—Exceptions were shown as cause on the day they were filed: *Held*, that they might be referred *instantly*, notwithstanding the 16th Order of May, 1845, Art. 25. *Hughes v. Thomas*, 7 Beav. 584. See *Bishton v. Birch*, 2 Ves. & B. 42.

4. *Breach of injunction.*—It is a breach of an injunction to obtain an order to change the venue in the action. *Pariente v. Bensusan*, 13 Sim. 522.

5. *Committal.*—In order to obtain an order to commit for breach of an injunction, it should be proved that both the injunction and the notice of motion were personally served upon the parties sought to be committed.

*Semble*, that the order *nisi* for dissolving an injunction may be made absolute on the day appointed for showing cause, if no counsel appears to show cause, and on the motion of the leading counsel for the defendant. *Newman v. Parsons*, 32 L. O. 36.

## IRREGULAR ORDER OF COURSE.

An order of course alleged to have been irregularly obtained, cannot be treated as a nullity. It operates until, by a proper application, it is discharged. *Blake v. Blake*, 7 Bea. 514. See *Geneve v. Hannam*, 1 Russ. & M. 494; *Wilkins v. Stevens*, 10 Sim. 617; *Petty v. Lonsdale*, 4 Myl. & Cr. 547; *Fennings v. Humphrey*, 4 Bea. 1.

## ISSUE.

*New trial.*—Before a judge will be called on to furnish his notes of the trial of an issue, the counsel for the party moving for the new trial must satisfy the court that they are necessary for the purpose of the motion. *Hungerford v. Jagoe*, 1 J. & L. 691.

## LUNACY.

*Staying proceedings in a suit.*—After decree, a commission of lunacy issued against the plaintiff, who being a married woman, was suing by her next friend. The V. C. of England, on the application of her husband, a defendant, stayed the proceedings in the suit until the result of the proceedings under the commission was known. *Hartley v. Gilbert*, 13 Sim. 596.

## MORTGAGEE.

See *Infant*, 2.

## MUNICIPAL CORPORATION ACT.

*Style of corporations.*—The Municipal Corporation Act does not substitute the words "burgess" for that of "citizen," in cases where the latter was the appellation used before the passing of the act. *Attorney-General v. Corporation of Worcester*, 32 L. O. 251.

## PAYMENT INTO COURT.

1. *Contingent interest.*—A residuary sum of stock standing in the names of trustees, the dividends of which were paid by them to the parties entitled thereto, ordered to be transferred into court to the credit of the cause, on the application of a party entitled to a mere

contingent interest in the fund, and notwithstanding that all the parties entitled to vested interests therein were satisfied with the conduct and custody of the trustees, and opposed the application. *Bartlett v. Bartlett*, 4 Hare, 631.

2. *Decree.—Sale.—Enlargement of time.*—Bill to set aside a purchase made by the defendant, or to have same declared a trust for the plaintiff. By the decree the plaintiff's right to have the purchase declared a trust was established, and certain accounts were directed, upon the taking of which it was ascertained that a sum of 5,162l. 11s. 8d. was due to the defendant, and under the final decree, the plaintiff was ordered to pay same within six months, and that thereupon the estate should be reconveyed to the plaintiff. The plaintiff having failed to pay this sum within the appointed time: *Semble*, that the proper remedy for the defendant under such circumstances was the dismissal of the bill.

By consent, the time of payment was enlarged for four months, and in default of payment within that period, a sale was directed. *Austin v. Chambers*, 1 Dru. 85.

3. *Purchaser.—Delay.*—A purchaser is not excused from paying his money into court by the delay of other parties not completing the conveyance. *Grace v. Bayntun*, 32 L. O. 153.

4. *Partnership.*—The court will not, on a bill filed by a partner for an account of partnership transactions, order payment into court of a balance admitted by the defendant to be due from him to the partnership, unless he admits the amount to be in his hands. *Bradley v. Teale*, 32 L. O. 252.

5. *Doubtful title.*—A court of equity will not order payment into court, if the title of the party applying is at all doubtful. Neither will it order a fund standing to the credit of a cause between A. and B. to be transferred to the joint credit of that and of another cause, in which it is claimed by C. adversely to both A. and B., unless C. has a perfectly clear title to the fund. *St. Victor v. Devereux*, 13 Sim. 641.

#### PRELIMINARY INQUIRIES.

See *Creditor's suit*.

#### PUBLICATION, ENLARGING.

1. The court will not enlarge publication, because the solicitor having supposed that the new orders allowed two calendar months within which application might be made to the Master to enlarge, had neglected to apply to him. *Stephen v. Dingwall*, 31 L. O. 576.

2. A solicitor having made application to the Master, but having been prevented by an accident from getting publication enlarged by the Master, a month's further time given by the court. *Groom v. Stinton*, 32 L. O. 82.

3. When the defendant will not be prejudiced, the plaintiff may have the time for passing publication enlarged, upon paying all the costs of the application. *Hemmerly v. Dingwall*, 32 L. O. 251.

#### RECEIVER.

1. A receiver in a creditor's suit in which a

previous decree had been made will be granted, such a decree being no bar to a second order respecting the same assets. *Tanner v. Carter*, 32 L. O. 14.

2. The 143rd Irish General Order, forbidding any clerk or agent of a solicitor to be appointed a receiver, is general, and not confined to clerks or agents of the solicitors in the cause or matter: *In re Stokes*, 1 J. & L. 675.

#### REPORT.

*Alteration after confirmation.*—Before a report could be altered after confirmation the order should be obtained to take it off the file. *Attorney-General v. Corporation of Leicester*, 32 L. O. 302.

#### REVIVOR.

Subpoena to appear to bill of revivor served on the 3rd July, and an application made on the 4th of December to enter appearance for defendant: *Held*, that the plaintiff must either serve a new subpoena or give notice of motion. *Tolly v. Ingleby*, 7 Bea. 591.

#### SALE.

1. Hearing for further directions. Decree for a sale pronounced. *Simpson v. O'Sullivan*, 1 Dru. 89.

2. By the decree, the plaintiff's demand was declared a charge upon the lands, and liberty was given to all parties to apply, as occasion might require. The L. C. of Ireland subsequently upon motion, directed a sale. *Watson v. Pim*, 1 Dru. 90.

And see *Payment into Court*, 2.

#### SEALING WARRANT.

See *Contempt*, 4.

#### SEQUESTRATION.

*Contempt.*—An order cannot be obtained as a matter of course against a peer for nonpayment of money ordered to be paid by him, if any calculation is required to be made of subsequent interest. *Wright v. Earl of Mornington*, 32 L. O. 133.

#### SERVICE OF BILL.

See *Bill*.

#### SERVICE OF PROCESS OUT OF JURISDICTION.

1. The 33rd Order of May, 1845, enabling the court to order service of subpoena to appear and answer, "where a defendant in any suit is out of the jurisdiction," is not limited by the 2 Will. 4, c. 33, and 4 & 5 Will. 4, c. 82, to suits instituted in respect of lands or tenements, or hereditaments in England or Wales. *Blenkinsopp v. Blenkinsopp*, 32 L. O. 251.

2. The 33rd Order of May, 1845, which enables the court to order the service of the subpoena to appear and answer upon a defendant out of the jurisdiction, does not apply exclusively to suits concerning lands, stock, or shares within the statutes, 2 Will. 4, c. 33, and 4 & 5 Will. 4, c. 82, but gives the court a discretion, according to the circumstances of the case, to

permit such service in any suit whatever. *Whitmore v. Ryan*, 4 Hare, 612.

3. Service abroad of a subpoena to appear and answer directed, under the 33rd Order of May, 1845, upon a defendant of unsound mind not so found by inquisition. *Biddulph v. Lord Camoys*, 7 Bea. 580.

4. Upon an application to serve a subpoena abroad, under the 33rd Order of May, 1845, an affidavit merely showing the place of residence abroad of the defendant seven weeks previous, is insufficient. *Fieske v. Buller*, 7 Bea. 581.

5. Liberty being given under the 33rd Order of May, 1845, to serve a subpoena in Ireland, the periods limited under the 2nd article, were ten days to appear, six days to plead, answer, or demur, not demurring alone, but no order was made as to the time for demurring alone. *Brown v. Stanton*, 7 Bea. 582.

#### SETTING DOWN CAUSE.

See *Hearing*.

#### SETTLED ESTATES DRAINAGE.

See *Drainage*.

#### SUBSTITUTED SERVICE.

Before the court will direct service at a man's office to be good service on him, it must have some proof that he is carrying on communication with the office. *In re Wilson*, 32 L. O. 351.

#### TRIAL NEW.

See *Issue*.

#### VACATION APPLICATION.

*Jurisdiction*.—Orders of 5th May, 1837.—*Semble*, that the 15th Order of May, 1837, empowering any judge of the court to hear special applications in vacation, where the proceedings have been originally instituted before another equity judge, does not apply to any other than the long vacation. *Lawton v. Ridsdale*, 32 L. O. 33.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

#### REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

##### Rolls Court.

*Teesdale v. Swindall*. July 23, 1846.

32ND SEC. OF ORDER 16TH OF 1845.

*Proper form of a special order allowing exceptions to be referred on the same day on which they are filed.*

THIS was a motion to set aside an order referring exceptions for insufficiency to the Master for irregularity, on the ground of its bearing date on the same day on which the exceptions had been filed.

The order was in the form of a common order, but it had been in fact obtained on a special application to the court, having been refused in the first instance for want of an affi-

davit of service, though it appears that similar orders are obtained in the V. C. of England's court, only on the suggestion of counsel.

Mr. Roupell for the motion.

Mr. Turner and Mr. Gifford, contra.

Lord Langdale said, the proper form of the order would have been, notwithstanding the general orders, let the reference be made. But there could be no doubt of the regularity of the order. The court had power to dispense with these general orders in particular cases, and in this case had so done.

*Re Wheldon*. June 4, 1846.

#### FOUR DAYS' ORDER.—DELIVERY OF BILL.

*The motion to commit for non-delivery of a bill of costs must be preceded by an order for its delivery within four days.*

Mr. Gardener moved for an order against a solicitor, to deliver his bill within four days or to be committed. He produced an affidavit of a former order to deliver the bill having been served, but he had not any affidavit of a bill having been delivered.

Lord Langdale said, there must be an affidavit that no bill had been delivered. Upon which an order to deliver the bill within four days, and if that order was not complied with there might then be an application for his committal.

*Jope v. Pearce*. May 23rd, & June 11th, 1846

#### EVIDENCE.—PROOF OF MARRIAGE.—REGISTER.

*The court will not usually dispense with proof from the register of a marriage on an application to have money paid out of court; but if the parties are residing in a country in which it is probable registers have not been kept, the court will, on receiving reasonable evidence to support this conclusion, and an affidavit of a party present when the marriage ceremony was performed, make the order.*

THIS was the petition of a residuary legatee of a fund standing to her credit in the name of the Accountant-General, praying that the same might be transferred to an attorney appointed by her.

The petition stated that there was standing in the name of the Accountant-General to the credit of the cause "The account of Deborah Jope and Isaac Jope," in bank 3 per cent. annuities, 575l. 5s. 4d.; and in reduced annuities 25l. 10s. 4d., to one moiety of which the petitioner Deborah Jones, formerly Deborah Jope, was entitled. The petition also stated that the petitioner Deborah Jones intermarried with the petitioner Benjamin Jones on the 6th March last, and it prayed that the funds to which the petitioner Deborah Jones was entitled might be paid to her solicitor, she and her husband being both resident in America.

The only evidence in support of the marriage



was that of the Baptist minister who performed the ceremony, who stated that on the 6th of March last, at the house of Mrs. Phoebe Jope, in the city of Pittsburgh, he duly joined together in the bonds of holy matrimony the petitioners, and that the marriage so solemnized was a good and legal marriage according to the rites and ceremonies of the Baptist church in Pittsburgh.

Mr. Rogers for the petitioners.

Mr. Miller for the trustees.

The Master of the Rolls said the evidence of the marriage was not sufficient. Either a certificate from the register must be produced, or evidence given that no register is kept.

June 11th.—Mr. Rogers this morning read an affidavit of the petitioners' solicitor, stating that within the last few years he had several matters of business for parties living in the State of Pennsylvania, entitled to legacies and trust monies, and that no records or registries of births, marriages, or deaths appeared to have been kept, and he verily believed no such registries were kept; whereupon his Lordship made the order.

Robinson v. Wall. June 22, 1846.

#### SUPPLEMENTAL ANSWER.

Before leave to file a supplemental answer can be obtained, the answer intended to be filed must be produced.

THIS was a motion for leave to put in a supplemental answer for the purpose of putting in issue a number of documents, of which the defendant was alleged to have obtained information by means of a cross bill filed for discovery.

Mr. Turner and Mr. Rogers for the motion.

Mr. Kinsersley and Mr. Chambliss, among other grounds of objection, urged, that in order to justify such an application it was necessary that the answer intended to be put in should be produced, and the plaintiff furnished with a copy of it, which had not been done here.

In this objection Lord Langdale concurred; and the motion therefore stood over to allow of the answer being prepared.

Biddulph v. Lord Conroys. July 6th, 1846.

#### LUNATIC.—32ND ORDER, 1845.—SOLICITOR.

The court will not appoint the solicitor of the wife guardian for her husband under this order; nor give any directions for his being employed as the solicitor for the husband.

Mr. Cooke moved, under this order to appoint the solicitor of Mrs. Biddulph guardian for her husband, who was of unsound mind, but had not been found a lunatic. There was an affidavit of service on the wife with whom the husband lived, and that the wife had no interest in the cause adverse to that of her husband.

But Lord Langdale refused to make the appointment, saying that the wife's solicitor ought not to be guardian for the husband.

Mr. Cooke then asked that Mr. Johnson, the solicitor to the suitors' fund, might be appointed, which Lord Langdale consented to do, after ascertaining that the form of the motion was general, namely, that one of the solicitors of the court might be appointed guardian; otherwise, as the wife did not appear, the order could only have been made for appointing the person specified in the notice.

Mr. Cooke then asked for a direction to Mr. Johnson, if he saw no objection to employ the wife's solicitor to act for the husband. But Lord Langdale refused to give any directions at all interfering with the discretion of the guardian, at the same time stating that the course suggested might very probably be the proper course for Mr. Johnson to adopt.

Vice-Chancellor of England.

Askew v. Askew. July 27th.

#### EVIDENCE.—PRESUMPTION OF DEATH.— CERTIFICATE OF BURIAL.

A certificate of burial may be dispensed with where general evidence of the death is given—the age of the party, if living, would be so great as to afford strong presumptive evidence of his death.

IN support of the petition in this case it became necessary to give evidence of the death of a party who was stated to have died several years ago, but a certificate of his burial could not be obtained.

Mr. Lloyd said, that as evidence had been given to show that the party was admitted into holy orders in 1775, when he must have been at least 23 years of age, he would now, if living, be 97, and he submitted that general evidence of his death was sufficient.

The Vice-Chancellor said he thought the certificate might be dispensed with.

Vice-Chancellor Knight Bruce.

Topping v. Howard. Lincoln's Inn, July 18, 1846.

#### GUARDIAN.—INFANT.—COMMISSION.

The court will appoint a guardian to infant, without appearance or commission, where it appears upon affidavit that they are resident in different parts of England, that the proposed guardian is respectable, and that there is no adverse interest.

A MOTION was made by Mr. Winstanley, that the defendant in the suit might be appointed guardian *ad litem* to the infant defendants, nine in number. The latter were proved to be in various parts of England. The motion asked, that the appointment might be made without the appearance of the infants in court, and without any commission. The motion was supported by the usual affidavit as to the respectability of the proposed guardian, and of the absence of any adverse interest. (*Drant v. Vause*, 2 Yon. & Col. C. C. 524; *Silwell v.*

Blair, 13 Sim. 399; *Smith v. Palmer*, 9 Bea. 10; *Skittleworth v. Skittleworth*, 2 Hare, 147.)

His Honour granted the motion, observing, that he must treat the case of *Drant v. Vause*, upon which the Lord Chancellor had been consulted, as now quite conclusive of the practice.

### Vice-Chancellor Wigram.

*Evans v. Gwillink*. East. T., 1840.

DISMISSAL OF BILL.—FILING REPLICATION,  
—PARTIES.—COSTS.

*Where a motion has been made upon notice, and an order obtained for filing the replication within a certain period for dismissal of the bill, and it appeared, that at the time of such order, one of the defendants at whose instance it was made was dead, the court discharged the order with costs, upon the ground of irregularity.*

Mr. J. H. Palmer, on behalf of the plaintiff, moved to discharge an order which had been made in this case, for filing the replication within a fixed period, or that the bill might be dismissed. The usual motion had been made on the part of the defendants to dismiss the bill for want of prosecution. The court ordered, that the replication should be filed on or before a certain date, or that the bill should be dismissed. The ground of the present motion was, that at the time of making the order, one of the defendants, whose name had been used, was in fact dead, and it was submitted that the order was irregular, and that the court would discharge it with costs. (*Rowlett v. Cattell*, 2 Hare, 186.)

Mr. H. Clarke opposed the motion. (*Sellas v. Dawson*, 2 Dick. 738; S. C. 2 Anstr. 468, n.; *Boddy v. Kent*, 1 Mer. 361.\*)

His Honour discharged the order with costs.

### Queen's Bench.

(Before the Four Judges.)

*Robinson v. Ward*. Easter Term, 1846.

ASSUMPSIT.—PLEADING.—TENDER.

*A declaration for use and occupation consisted of several counts for rent, work done, money paid, money lent, and an account stated, and the same sum was claimed in each count. The defendant pleaded, except as to 7l. parcel of the monies in the declaration mentioned, non assumpsit; and as to the sum of 7l. parcel, &c., a tender of that sum. The evidence was, that the sum of 7l. was all that was due, and that it was tendered in respect of the rent claimed in the first count of the declaration.*

Held, that on these pleadings the defendant was entitled to a verdict, and that the form of the plea being "parcel of the monies in

the declaration mentioned," did not constitute an admission of the defendant's liability on each count of the declaration so as to preclude him from proving the plea by showing that the tender was made in respect of the sum claimed in the first count.

THIS was an action of assumpsit for use and occupation. The declaration contained counts for use and occupation, work done, money lent, money paid, and an account stated. The sum of 45l. 10s. was claimed in each count. The defendant pleaded, except as to 7l. parcel of the monies in the declaration mentioned, *non assumpsit*. And as to 7l. parcel, &c., tender. At the trial it was proved that the sum in dispute was 7l., which was tendered in respect of rent claimed in the first count in the declaration. It was objected on the part of the plaintiff, that the plea of tender was not proved, because the tender, being as to 7l. parcel of the monies in the declaration mentioned, must be taken to refer to each count in the declaration, and to admit something to be due on each count, and cannot be applied to the sum mentioned in the first count. The learned judge was of opinion that the plea was not proved, but reserved leave for the defendant to move to enter a verdict. A rule nisi to that effect having been obtained,

Mr. Mellor showed cause. The plea of tender must be placed on the same footing as a plea of payment, and it has been held that in *indebitatus assumpsit* the plea of payment admits that something is due on each of the counts to which it is pleaded. (*Kingham v. Robins*,<sup>a</sup> *Archer v. English*.<sup>b</sup>) The plea to support a verdict for the defendant ought to have been pleaded to the rent claimed in the first count of the declaration. The effect of the plea in the manner in which it is pleaded must be that it admits that a certain sum is due on each of the counts of the declaration, and the evidence is that it is tendered only in respect of the sum claimed in the first count.

Mr. Bramwell and Mr. Willes contra. The effect of the plea of tender of a certain sum, "parcel of the monies in the declaration mentioned" in *indebitatus assumpsit*, must mean that the defendant only owes that sum in respect of all the monies claimed by the plaintiff. The sum tendered may be parcel of one or more counts in the declaration, and the plea is in effect a plea to the aggregate of the damages claimed. In the case that has been cited of *Kingham v. Robins*, the court held, that the payment of money into court only admitted a liability on some one or more contracts to the amount of the sum paid in. It is not necessary to specify how much is paid in on one count, and how much on the other; for it is established that where there are several counts for several causes of action, or several breaches are assigned in covenant, the defendant may plead payment into court of one entire sum generally on all the counts or breaches, or on a particu-

\* Vide also *Bull v. Roberts*, L. O. vol. 32, p. 82.

<sup>a</sup> 5 Moo. & Wel. 24.

<sup>b</sup> Man. & Granger, 677.

ar parcel of the several sums claimed on breaches. 1 Sand. 33.<sup>c</sup>

*Cur. ado. vult.*

Lord Denman, C. J., on a subsequent day said the court was of opinion that the rule ought to be made absolute.

Rule absolute to enter verdict for defendant.

### Common Pleas.

*Hollier v. Todd, Laurie, and Chaplin.* Trinity Term, 1846.

#### INTERPLEADER ACT.—MOTION TO STAY PROCEEDINGS AFTER INTERPLEADER ORDER.

*Under the Interpleader Act, 1 & 2 Will. 4, c. 59, the court has no power to stay the proceedings in an action against the sheriff for breaking and entering the plaintiff's house, though consequent upon a seizure of certain goods, the claim to which had been decided in favour of the plaintiff under an interpleader order.*

*An application to stay proceedings under the act should be made to the court in which the interpleader proceedings have taken place, or a judge thereof.*

THIS was an action of trespass for breaking and entering the plaintiff's lodgings, against the execution creditor and the sheriffs of Middlesex. The plaintiff, Mary Hollier, and her daughter, it appeared, lodged in the house of one Magee, against whom a writ of *fi. fa.* had issued at the suit of the defendant, Todd, and under this writ the other two defendants, the sheriffs, had entered the apartments of the plaintiff and seized certain goods which she claimed. An interpleader order had been taken out by the sheriffs directing an issue, Mary Hollier to be the plaintiff, and the execution creditor, Todd, the defendant, and the result was, that Mary Hollier succeeded in recovering a verdict. The present action was then commenced, and on a former day in last term a rule *nisi* to stay all further proceedings against the sheriffs had been obtained on the ground that the proceedings under the interpleader order had completely disposed of the cause of action as against them.

*Byles*, Sergeant, now showed cause. There is nothing in the interpleader order to affect the right of proceeding in respect of the breaking and entering the plaintiff's lodgings. This is the case, not of taking the goods of another in the house of the debtor, but of entering the house of another, and the effect of the present application would be, that the sheriff might enter the house of any one in the county with impunity. The Interpleader Act, 1 & 2 W. 4, c. 58, s. 6, relates only to the stay of proceedings in "such action," and to the claim made in respect of "such goods," &c., and does not give to the interpleader order the effect now contended for. Besides, all the proceedings under the interpleader order have been in the

Exchequer, and this court therefore cannot interfere.

Sir T. Wilde and Channell, Sergeant, contra. The Interpleader Act being a remedial statute should be construed liberally. The 6th section uses very general terms in its recitals, and enacts that when "any such claim shall be made," &c., it shall be lawful for the court to interfere. This provision draws down all the previous sections, and enables the court to give the sheriff protection to the same extent. The action here is brought for a trespass arising out of the seizure of the goods, and is one of the evils intended to be remedied by the act. Then as to the previous proceedings having been in the Court of Exchequer, it is submitted that this court has jurisdiction to stay the proceedings, the Exchequer could only commit the plaintiff for a contempt in proceeding.

*Maule, J.* Could an order in another court stay proceedings here? then what jurisdiction has this court over the interpleader proceedings in the Exchequer?

Sir T. Wilde. Suppose an action of trespass *de bonis asportatis* had been brought for these goods, this court would interfere to stay the proceedings; the court ought to be astute in giving effect to the act.

*Tindal, C. J.* It appears to me that this case does not fall within the Interpleader Act, and that we have no authority to stay the proceedings. The plaintiff here had two causes of action,—a right to complain of the sheriff for breaking and entering her house, and also a claim for her goods. Now, as to the latter, the Interpleader Act applies a remedy, but it is altogether silent as to the injury for breaking and entering the house of the plaintiff. From the law laid down in *Semayne's case*, 5 Coke, 91, it is clear that the sheriff enters a man's house at his own peril. The amount of damages must depend, of course, on the particular circumstances of the case, and the amount of the injury sustained. We should be taking upon ourselves an authority we do not possess, if we were to extend our jurisdiction to the extent of the present application. The act was intended to apply to cases of daily occurrence, and the case of entering into a wrong house is not one of daily occurrence. The lodgings of the plaintiff, if *domus mansionalis*, were as much her house as if they had been a separate building.

*Coltman, J.*, concurred.

*Maule, J.* I think also that under the Interpleader Act this court has no jurisdiction. The 6th section directs the application to be made to the court in which the execution issues, and here that is the Court of Exchequer. The application, therefore, if a proper one, should have been made to that court, or some judge of that court. But I am also of opinion that this is not a case which comes at all within the jurisdiction given by the Interpleader Act.

*Cresswell, J.* It appears to me that the Interpleader Act intended relief to be given only where a claim was made to the goods seized, and not where made for something else, such

<sup>c</sup> The cases are collected in notes k and l.

as a compensation in damages for an injury done. The act gives no power to the court or a judge to compel a party to enter into a compromise with respect to an injury like the present.

Rule discharged with costs.

### Exchequer.

*Lowe v. Steel.* May 2, 1846.

#### PLEA OF PAYMENT.—DAMAGES.

*In an action of debt, the form of plea of payment of money into court given by the rule of Trinity Term; 1 Vict., is insufficient; it should be so framed as to include a payment into court, on account of the damages as well as the debt.*

THIS was an action of debt, to which the defendant pleaded payment of 13*l.* in court, in the form prescribed by the rule of Trinity Term, 1 Vict., averring, that "he was not indebted to the plaintiff in a greater amount than the said sum of 13*l.*, in respect of the cause of action in the declaration mentioned." The plaintiff signed judgment on the ground that the plea professed to answer the whole cause of action, but afforded no answer to the damages for the detention of the debt. A rule nisi having been obtained to set aside the judgment for irregularity,

*Cowling* showed cause. The judgment is regular. The plea admits 13*l.* to be due, and upon that sum the plaintiff might recover interest by way of damages. If this plea were held good a plaintiff could never recover interest in an action of debt, and if he brought another action for the interest, the judgment in this action might be pleaded in bar. *Hitchin v. Campbell*, 2 W. Blac. 830; *Lord Bagot v. Williams*, 5 D. & R. 87. The rule of Trinity Term, 1 Vict., directs, "that where money is paid into court, such payment shall be pleaded in all cases as *near as may be*, in the following form, *mutatis mutandis*," and in this case the plea should have been altered accordingly, so as to answer both debt and damages. Before that rule, money paid into court only went in liquidation *pro tanto* of the debt and damages. *Kidd v. Walker*, 2 B. & Adol. 704. In an action of debt, the plaintiff would not be entitled to costs, unless he recovered some damages. *Blackmore v. Fleming*, 7 T. R. 446. In *Henry v. Earl*, 9 Dow. P. C. 728, Lord Abinger, C. B., says, "though the damages in an action of debt are generally considered as nominal only, yet the jury may give substantial damages if they think fit. (*Pollock, C. B.*, referred to *Bailey v. Sweeting*, 6 D. & L. 653.)

*Martin*, contra. The argument on the other side proceeds on the assumption, that in every case of a debt for goods sold or otherwise, interest is due. The language of *Holroyd, J.*, in *Higgins v. Sargent*, 2 B. & C. 348, shows that it is not so. The damages are merely nominal to enable the plaintiff to obtain costs under the statute of Gloucester. In debt for rent it is sufficient to plead, that the rent was

levied by distress, Com. Dig. Plead. (2 W. 47), though in that case the plaintiff seeks to recover damages for the detention of the debt. The obligor of an indemnity bond is entitled to have satisfaction entered on the roll on payment of the penalty of the bond and costs of the action. *Wilde v. Clarkson*, 6 T. R. 303. In a case of *Branscombe v. Bridges*, Trinity Term, 1844, the Court of Queen's Bench were inclined to think, that in an action on a bond, the plaintiff was not entitled to nominal damages for the detention of the debt. The plaintiff is clearly irregular in signing judgment, for the rule itself prescribes the course to be taken upon every such plea.

*Cur. adv. vult.*

*Pollock, C. B.* The question was, whether a plea in an action of debt was bad, or rather incomplete, which did not take notice of the damages claimed in the declaration beyond the debt. It must be conceded, that the form of plea given by the rules is not accurate, as it omits to notice these damages expressly. In an action of debt no doubt the plea must state that the defendant never was indebted to the plaintiff in a greater amount, but the question is, whether it must not also notice the damages for the detention of the debt. We think it must, in order to constitute an answer to the action, because it may happen that damages are a very important part of the plaintiff's claim—as for instance, in debt on a mortgage deed, where the principal and interest are to be paid on a certain day, the interest after that day can only be recovered as damages, and that interest may equal or even exceed the debt, as it is impossible to tell on the face of the record whether the damages are substantial or not, we think the plea ought to be framed so as to include a payment into court on account of the damages, and the plea should be varied accordingly, in order to adapt it to the nature of the action. The present rule must therefore be discharged, and as the defendant has been misled by the insufficiency of the form of plea given by the new rules, it should be without costs, and the defendant may amend his plea on payment of the costs of amendment only.

Rule accordingly.

## NOTES OF THE WEEK.

### PROFESSIONAL MALPRACTICE.

IN reference to the observations contained in our last, arising out of a late trial before Mr. Justice *Erie*, on the western circuit, a correspondent remarks, that the existence of branch offices in country towns, not under the immediate personal superintendence of a principal, although an evil of great magnitude, is incomparably of less importance and less injurious in its effects on the public, than the systematic violation of the law, and of all professional rules, which notoriously exists amongst a class

of practitioners in London, who suffer their names to be used in the conduct of actions and other proceedings by persons equally deficient in education and character.

We venture to hope, that if the class to which our correspondent adverts has any existence, it consists of a very limited number of individuals; but we agree with him, that if a register was established in which every solicitor and attorney was bound to insert the names of those who act as his clerks, and for whose professional proceedings in that character he should be considered responsible, it would afford a salutary check, if not an effective remedy, against an abuse which the profession and the public are equally interested in suppressing. Our correspondent's suggestion is well deserving of consideration.

#### TRANSFER OF THE JURISDICTION IN MATTERS OF INSOLVENCY.

As our readers are already aware, the bill, so long before parliament for amending the law of bankruptcy and insolvency, stands over until the next session, with a tolerably significant intimation from the present Lord Chancellor, that he participates in the general dissatisfaction created by the results of the continued changes in this branch of the law. We have learned from an authority which has considerable opportunity of obtaining correct information, that it is in contemplation early in the next session of parliament to introduce a comprehensive measure for amalgamating the law of bankruptcy and insolvency, and that it is proposed to put an end to the anomaly which now exists, by transferring the jurisdiction in matters of insolvency to the commissioners of bankruptcy, retaining that portion of the present insolvent law, which enables the commissioners to go circuit for the discharge of insolvents. We apprehend that the services of the insolvent commissioners will still be required to carry out the latter part of the plan.

#### PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

##### House of Lords.

###### NEW BILLS.

Juvenile Offenders. In Committee. Marquis of Westminster.

General Registration of Deeds. — For 2nd reading. Lord Campbell.

Punishment for deterring Prosecutors' Witnesses, &c.—In Committee. Lord Denman.

Game Laws. To be reported.

Small Debt Courts:

St. Austell. In Committee.

Birkenhead. In Committee.

Commons Enclosure. Commons Amendment to be considered.

Tithe Act Amendment. In Committee.

Poor Removal.—In Committee.

Copyhold Commission. In Committee.

Highway Rates. In Committee.

Turnpike Acts. In Committee.

Common Pleas. For 2nd reading.

Deodands Abolition. For 2nd reading.

##### House of Commons.

###### NEW BILLS.

Small Debts. Re-committed for the 17th.

Commons Inclosure, No. 2. In Committee.

Commons Inclosure, No. 3. For 3rd reading.

Northampton Small Debts Court.

Total Abolition of the Punishment of Death.

Mr. Ewart.

County Rates. For 2nd reading.

Insolvent Debtors Amendment Act. For 2nd reading.

###### BILLS PASSED.

Recovery of Salvage.

Drainage of Land.

Religious Opinions.

Deodands Abolition.

Death by Accidents Compensation. See p. 356, *ante*.

Common Pleas Court.

Copyhold Commission Continuance.

Turnpike Acts Continuance.

Highway Rates Continuance.

Commons Inclosure, No. 3.

###### POSTPONED.

Judgment Creditors.

#### THE EDITOR'S LETTER BOX.

It will be observed, that we are giving all the Statutes relating to the Law as soon as promulgated, and we shall continue this course without resorting to double numbers or extra charges. Explanatory notes will accompany or speedily follow all the material enactments.

The burthen of proof will rest with "A Young Attorney," but if he can prove that only 20*l*. was received, he will not be answerable for a larger sum, notwithstanding his mistaken acknowledgment.

A Correspondent states, that he regularly takes the Legal Observer through a Liverpool bookseller, and inquires whether it is on account of any delay in publication that he now scarcely ever receives it in Liverpool before Tuesday. Our answer is, that there never has been any instance of delay in publishing the work, that it is ready at 9 o'clock on Saturday morning, and ought to be in Liverpool the next day and delivered early on Monday morning.

# The Legal Observer.

SATURDAY, AUGUST 22, 1846.

—“ Quod magis ad nos  
Pertinet, et noscitur malum est, agitur.”

HORAT.

## MEMOIR OF THE LATE LORD CHIEF JUSTICE TINDAL.

NICOLAS CONYNGHAM TINDAL, the late Lord Chief Justice of the Court of Common Pleas, was born at Chelmsford in the year 1776. He was descended from an ancient family in Essex, of which Dr. Matthew Tindal and the Rev. Nicolas Tindal were distinguished members. The immediate ancestor of the subject of this memoir was Robert Tindal, many years a solicitor at Chelmsford.

Mr. Tindal went through the usual course of school education at Chelmsford, and in the year 1795, entered Trinity College, Cambridge. At the expiration of four years he took the degree of Bachelor of Arts, and in 1802, that of Master of Arts. He obtained the prize of the Chancellor's Senior Medallist, and stood high as a wrangler. He was elected a fellow of his college in 1803, and soon afterwards commenced his studies for the bar at Lincoln's Inn. He was a pupil of Mr. Richardson, afterwards the learned and amiable judge.

At that time it was not required by the Inns of Court that persons practising under the bar should previously keep the ordinary twelve terms, but permission was usually granted to enter on such practice immediately. Mr. Tindal availed himself of this permission, and practised as a special pleader, in which department of business he soon met with considerable success. This has been the course of many eminent lawyers who thus establish a reputation for skilful advice in the institution and defence of actions, the preparation of pleadings and settling evidence; and hence acquiring the confidence of their clients, they are enabled

to proceed to the bar with a sure anticipation of success. Such has been the career of Mr. Tindal, Mr. Follett, and many other eminent individuals.

After some years' practice as a special pleader, Mr. Tindal was called to the bar. This took place on the 20th June 1809, and he selected the northern circuit as the field of his first exertions. It is said, that during the early years of his progress, he had so little expectation of his future eminence, that he applied or had thoughts of applying for a colonial appointment; but was dissuaded from expatriating himself by one who knew his attainments and capacity, and augured truly of his final success in this country.

Although Mr. Tindal was never distinguished as a popular speaker, he soon displayed eminent powers of reasoning and a profound knowledge of the law. The Common Law Reports afford abundant evidence of the esteem in which he was held as a lawyer. He was engaged in many of the most difficult questions, and argued them with logical skill and great ability.

Our readers are aware that in the absence of lectures at the Inns of Court, or any other means of instruction or preparation for the bar, (now happily soon to be supplied,) it is the custom for students, after entering themselves at one of the Inns of Court, to resort to the chambers of a special pleader or barrister in good practice and distinguished for his skill and learning. Certainly no better choice could be made of a preceptor than the subject of this memoir. Of kind and courteous manners, sound and discriminating judgment, great learning, patience, and assiduity, he was precisely the person with whom a student, anxious to acquire a knowledge of his profession, would be ad-

vised to study, and accordingly we find that the pupils of Mr. Tindal were numerous. Amongst others who had the benefit of his able advice and instruction, were Lord Brougham and Mr. Baron Parke.

There is, of course, no better test of the esteem in which a barrister is held for his legal attainments than the frequency with which cases are submitted to him for his advice on difficult questions of law. In this respect Mr. Tindal was particularly distinguished, and his opinions were much esteemed, as well for their discrimination and learning, as for the conscientious and cautious advice which they contained.

The first occasion, we believe, on which Mr. Tindal particularly distinguished himself before the court was in the year 1818, in the celebrated case of *Ashford v. Thornton*,\*—the last in which the right of trial by battel was discussed. Mr. Tindal was retained for the appellee, and ably and successfully argued the several points in his client's favour. Subsequently to this time, the attention of Lord Liverpool, the prime minister, was particularly directed to Mr. Tindal's merits in the case of the Deccan prize money, which he argued before the Lords of the Treasury. But the most remarkable trial in which Mr. Tindal was engaged was that of Queen Caroline in 1821. As one of the soundest lawyers at the bar, it was likely that he should be sought by both parties. On terms of friendship with Lord Liverpool, it appears that his lordship was desirous that he should be retained on behalf of the King; but, on sending to secure his services, it was found that Mr. Brougham, the Queen's Attorney General, his former pupil who went the northern circuit with him, and, of course, knew the high esteem in which he was universally held for his legal attainments, had previously caused him to be retained for the Queen. Doubtless he rendered to the Queen's attorney and solicitor much valuable aid in conducting a case of such extraordinary difficulty and vast magnitude. On all questions of evidence his opinions must have had the greatest weight, and his sagacity and discretion were also of great importance in the various questions which naturally came under the consideration of the Queen's advisers. In skill and energy, in vast resources and untiring zeal, he was eminently assisted by his

junior Mr. Wilde, now his successor on the bench.

If Mr. Tindal was not remarkable for the tact or skill of a Garrow in the examination of reluctant and artful witnesses at *ami prius*, he was a careful examiner in chief, and a cautious and judicious cross-examiner, and assuredly none could excel him in the clearness and logical force of his arguments before the court. Year after year brought him into increased practice of the best and most important kind; and however unassuming in his natural character, he must soon have become satisfied by comparing his acquirements with those of his competitors, (to most of whom he was superior,) that nothing more was wanting than the adoption of that course which seems indispensable to the highest legal honours,—that of a seat in parliament. To this honour he now aspired, and in the year 1824 he was elected one of the representatives of Wigton.

As at the bar, so in the senate, Mr. Tindal was noticed rather for his legal and historical knowledge than for his political or rhetorical attainments. How far he might have succeeded as a statesman and a parliamentary orator, had he chosen to devote himself to the pursuits which lead to eminence in those departments, it may be difficult to predict; but he seems always to have preferred solid to shining attainments, and to have aimed at the useful rather than the ornamental. It is indeed worthy of remark, that at one time Mr. Tindal contemplated changing his practice at the common law bar for that of the Court of Chancery,—a sufficient proof that he did not esteem himself peculiarly adapted for the business of a jury court.

We come now to his next important step in legal promotion. In Trinity vacation, 1826, on the elevation of Sir John Copley, afterwards Lord Lyndhurst, to the Mastership of the Rolls, Sir Charles Wetherell was appointed Attorney-General, and Mr. Tindal became Solicitor-General, and received the honour of knighthood. The Master of the Rolls continued to represent the University of Cambridge until he became Lord Chancellor, in April, 1827, during the administration of Mr. Canning. On the occasion of this vacancy, Sir Nicolas offered himself as a candidate to represent that learned university. Mr. Banks, who held similar political opinions, also solicited their suffrages; but the votes for Sir Nicolas were 479, and for Mr. Banks 378, being a majority of 101.

\* 1 Barn. & Ald. 405.

After representing Wigton, Sir Nicolas, at the general election in 1826, was chosen member for Harwich, from which seat he withdrew on receiving the high honour of an election by his *alma mater*.

On the retirement of Lord Wynford from the chief seat of the Common Pleas, in the Easter vacation of 1829, the vacant prize would naturally have fallen to the Attorney-General, but Sir Charles Wetherell had just retired from office as an opponent of the further claims of the Roman Catholics, and Sir James Scarlett was promoted to the post of Attorney-General.—Sir Nicolas Tindal continuing as Solicitor. Some remarks on this arrangement were naturally made by the bar, who are properly jealous of any invasion of professional usage; but it will be recollected that Sir James Scarlett had been an eminent leader, as well in London as on the northern circuit, before Mr. Tindal was called to the bar, and the latter, therefore, could feel no repugnance at the former being placed above him.

At that time Sir Robert Peel was member for the University of Oxford and Sir Nicolas for Cambridge. They both supported Catholic Emancipation. Sir Robert lost his seat for Oxford and Sir Nicolas exchanged his for the chiefship of the Court of Common Pleas, to which he was promoted in Easter vacation, 1829.

Whatever difference of opinion there may have been in estimating the degree of merit of Sir Nicolas as an advocate, the profession, as well as the public, are united in ascribing to him the undoubted possession of the highest judicial qualities. His calm dignity and thoughtful demeanor well became the judgment seat, and whilst he preserved the decorum necessary to the proceedings of the court, he entered not into any personal altercations with the bar. His grave urbanity and invariable good temper preserved him from those contests which had occasionally, under a previous chiefship, disturbed the serenity of the court.

His summings up to the jury were specimens of their kind. Clear and concise in stating and sagacious in commenting on the evidence before him, he never failed to inspire the jury and all who heard him with respect. In cases where minute and complicated facts were brought forward, he selected all that were important and presented them in the most lucid order. Where the evidence was conflicting, he directed the attention of the jury, with remarkable discrimination, to the proper tests

by which they might try the question and arrive at a just conclusion. The plausible theories which the advocate may have urged for the advantage of his client, it is of course the duty of the judge to investigate and expose to the jury. Here again, not only the logical powers but the intuitive good sense of the chief justice, enabled him readily to extricate the case from the subtle difficulties which ingenuity had created, and to present it clearly and dispassionately for the consideration of the jury.

Whilst he was thus distinguished in the multitude of important trials which came before him, both civil and criminal, he was not less eminent when presiding in his own court in Westminster Hall, or on appeals in the Exchequer Chamber. There his profound legal learning and judicial capacity were rarely equalled and never surpassed. Thus, during the long period of 17 years, Sir Nicolas presided over the Court of Common Pleas, ably administering and expounding the law, and leaving on record many of the best judgments for the future guidance of the profession. We believe that the reports of his decisions down to the very last term, would supply the materials for an ample Digest of almost all the great principles of the law, clearly stated, powerfully reasoned upon, and for the most part conclusively settled.

Amongst the most remarkable instances of the eminent judicial ability of the late Chief Justice, may be mentioned his charges to the grand juries under the special commissions issued on the occasion of the several riots at Bristol and Newport. The sound and masterly addresses in which the law was stated and expounded on these important trials, received the unanimous approval both of the profession and all public writers.

Under the statute 6 Geo. 4, c. 23, the Chief Justice might have retired two years ago, at the expiration of 15 years from the time of his appointment, but there was certainly no decline in his eminent faculties, and he continued to perform his important functions until within a very short time of his decease. Indeed, within ten days only of that lamented event, he attended with the other judges on an appeal in the House of Lords. There his last illness appears to have commenced, and soon after terminated fatally on the 6th July, in the 70th year of his age.

Having thus noticed the professional career of this distinguished individual,



it remains only to add a few particulars of his private life. He was married in the year 1809, to the youngest daughter of Captain Symonds of the Royal Navy, and his surviving family consists of two sons and a daughter. He had another son, Dr. Tindal, a physician, who died some time ago. He has also left two brothers: namely, Mr. Thomas Tindal, an eminent solicitor at Aylesbury, and Mr. Charles Tindal, the able manager of the Branch Bank of England at Birmingham. His eldest son, Louis Symonds Tindal, is a commander in the Royal Navy; the other, Charles John Tindal, was called to the bar in 1842, and his daughter is married to James Whatman Bosanquet, Esq., nephew of the late Mr. Joseph Bosanquet. By his will, Sir Nicolas appointed as his executors, his son Mr. C. J. Tindal, his son-in-law Mr. J. W. Bosanquet, and Mr. D. S. Bockett, an eminent solicitor, his nephew by marriage.

It is so well known that it is scarcely necessary to add, that not only in his family, but in a large circle of private and professional friends, he was eminently respected and beloved. He affectionately regarded his kindred, and liberally promoted their interests; yet ever with a just consideration of the claims of others. He was warmly attached to the Church, but held his own firm opinions with no feeling of intolerance towards those who differed from him either in doctrine or discipline. "Take him for all in all," we shall rarely, if ever, "look upon his like again."

### THE LOCAL COURTS' BILL.

THIS Bill, as we anticipated, has met with some impediments during the past week. It stood recommitted for last Monday, the 17th; was then postponed to the 18th, and on the latter day was deferred to the 20th.

A clause marked (O.) has been introduced in the reprint of the bill, authorizing the local court judges to make inquiries and give reports and certificates in all causes and matters in the *Court of Chancery*: making them, in fact, country Masters in Chancery. This is an extraordinary alteration of great importance, which ought not to have been made at the last hour.

We continue to receive communications, as well from the country as the town, relating to various points in the bill.

The exclusion of attorneys from the

office of judge, on the occasion of any future vacancy, is loudly objected to. The permission to continue those in office who have been appointed as clerks under the existing Petty-Court Acts, is open to objection. Many of them were appointed by the lay commissioners acting in those courts, and who are not the most competent persons to decide on the proper degree of judicial qualification.

The necessity of asking "leave of the court" to appear by attorney, which has been much complained of as a violent infringement of the rights of suitors, and calculated to be very annoying and inconvenient in practice, has been altered, but somewhat imperfectly.

It does not appear that the Hundred Courts are to be comprehended in the act, yet we are informed that many of them need reform, as much as any of the County Courts. We thought that one of the main objects of the bill and its chief recommendation, consisted in making or attempting to make one uniform system of Local Courts throughout the country; but the preservation of the Hundred Courts, is totally at variance with this boasted principle. A further bill will, in this and other respects, become necessary. Surely it would be better to defer the project till the next session, and in the mean time arrange the details with more attention, and render the plan something less difficult of execution than we doubt not it will now be found.

The jurisdiction as well for *damages* as debts, will comprehend a large class of cases of considerable difficulty, both in regard to the ascertainment of facts and the argument and decision of the law. We think the bill should be limited to simple and ordinary debts for goods sold, work and labour done, money lent, &c. This clause, we understand, will be partly corrected.

It is argued in favour of the bill, that every night some petition is presented in support of the bill and scarcely any against it. We have reason to believe that these petitions are mainly the production of persons who seek places under the act, and are not the spontaneous offspring of creditors suffering from any existing difficulties.

The provision which would have prevented the *prosecution* of existing suits has been amended: it now applies only to the commencement of future suits.

## MODES OF TAKING EVIDENCE.

### IN COURTS OF EQUITY AND IN THE ECCLESIASTICAL COURTS.

WHEN a cause is at issue, the next material step is to establish, by evidence, the points in dispute. And in courts of equity this is done, not by oral examination before judge and jury, as at law, but by written interrogatories which are administered to the witnesses by officers appointed for that purpose, who make a report in writing of the answers given upon such examination; this report being in fact what the court ultimately proceeds upon in making its decree.

The taking of evidence by commission is occasionally a matter of necessity in all courts; as when, for example, material witnesses are beyond jurisdiction, or are unable to give personal attendance at the trial of the cause. Hence this mode of taking testimony is known, more or less, to the law and practice of every country. It was used at Rome. It was exclusively employed in all ecclesiastical tribunals. And in most of the European states, wherever the question was one of civil right, and wherever the decision pronounced was subject to appeal, the evidence was invariably taken down in writing, and this was generally done, not by the court itself, but by commissioners duly authorised.

This being so, there were two distinct methods according to which the court might proceed. One was, to hand over the record, or a copy of it, to the commissioner, with directions and authority to examine the witnesses and to report, leaving it to his discretion so to conduct the examination as to bring out the points material to the ultimate decision. Another mode was to settle the interrogatories beforehand; which interrogatories, and which alone, the commissioner was to exhibit to the witnesses. Upon these two methods of proceeding the system of examination now pursued in courts of equity and in the spiritual courts is founded; although each of these tribunals have in the course of time deviated more or less from the original plan, as we find it expounded by the commentators on the Roman law.

Upon a suit in equity the interrogatories are prepared by counsel, and the commissioner or examiner has merely to administer them. The solicitor, however, specifies the interrogatories to be put to particular witnesses. In Doctors' Com-

mons the examination in chief is taken by the examiner *without* interrogatories previously adjusted. To enable him to do this effectually, the record in the ecclesiastical courts is divided into distinct heads or articles. And the examiner receives a list of the articles that each witness is expected to depose to. The cross-examination (strange to say) is by fixed interrogatories.

Now the marvellous thing to be attended to in this process is, that both in courts of equity and in the ecclesiastical courts the actual examination of the witnesses is *in secret*; none other save the examiner and the individual witness being present on the occasion. Not one of our English books of law explain the reason of this mysterious inquisition, so inconsistent with the maxims of common sense and with the genius of our jurisprudence. We are therefore driven to look into the legal authorities of Scotland, where a similar practice formerly obtained, but was abolished by a wise act of parliament. It is quite clear that the old mode of taking testimony in Scotland corresponded exactly with that now in operation in our own Court of Chancery. Lord Stair,\* in his valuable treatise on Scotch law, says:—

“Formerly parties were not allowed to be present at the advising of the testimonies of witnesses, nor to see the testimonies; for when they were taken none but every singular witness could be present, and when all had deposed the ordinary was to seal the testimonies with his own seal, and when they were opened, which was only at the time they were to be advised, so soon as decree was pronounced they were sealed up again, never to be opened thereafter. The reason then given for this custom was, that the witnesses *might not incur malice or prejudice by their testimonies, and thereby might the more freely depone*; and because all probation depends upon the faith and belief of the judges, which is their proper trust; but if the testimonies were published, debates upon their testimonies would be drawn in much more length than the debates of relevancy, whereby one court could not overtake the causes of a nation. But by a late statute, (Parl. 1686, cap. 18,) the testimonies of witnesses are ordained to be published, wherein there is this advantage, that witnesses cannot be so easily suborned, or depone for favour or fear, when their particular testimonies are known, and when they are examined, parties or advocates may more effectually follow them with emergent interrogatories minding them of circumstances.”

This is a most instructive passage, show-

\* Stair's Institute, B. 4, T. 47, s. 17.

ing (what we have long, but in vain, desiderated to ascertain,) the reason and policy of *clandestinity* in this matter. To the same effect another eminent Scotch writer observes :—

“By the ancient usage parties were neither allowed to be present at taking the proof, or at the courts taking it under consideration; nor had they access to see the depositions or written testimonies of the witnesses, lest they might be cramped in deposing from the apprehension of drawing on themselves the resentment of others on account of what they had deposed. (St. B. 4, t. 46, s. 17.) But by 1686, c. 18, the witnesses are ordained to be examined in the presence of the parties.”<sup>b</sup>

Ever since the passing of this enactment the wholesome practice of Scotland has been to permit the commissioner or examiner to be attended by professional persons on both sides, everything being conducted openly and in the face of day, the course of examination being left to the discretion of the rival advocates, the commissioner having nothing to do but to preserve order in the proceeding, to record the whole faithfully for the information of the court, and to take care that everything is done in conformity with the laws of the land and the rules of evidence. In this way the evidence of witnesses by written deposition often answers the purposes of justice as well, and sometimes better, than by *viva voce* examination; because the parties, their counsel, and agents, are present during the whole proceeding. They see the witnesses examined; they notice their behaviour while under examination; and, when necessary, they can cross-examine with the same facility and effect as at a *nisi prius* trial. Whereas, in the secret examinations to which we have adverted, cross-examination is found so difficult and ineffectual as to be but rarely resorted to in practice.

The unsatisfactory state of the practice in courts of equity on this subject was made very apparent in a case reported by Mr. Swanston, in which Lord Eldon showed, it must be owned, but little disposition to encourage the introduction of improvements. In *Buller v. Bulkeley*,<sup>c</sup> an application was made to his lordship for an order that the plaintiff might communicate to the defendant the interrogatories exhibited by him under a commission to be executed abroad, so as that the latter might be able with the more advantage to prepare cross-inter-

rogatories. And this application was fortified by reference to the practice of the common law courts in cases of the like nature. In support of the motion Mr. *Heald* represented that without

A knowledge of the plaintiff's interrogatories, the defendant would be unable to cross-examine with effect. A plaintiff at law might obtain a commission for the examination of witnesses abroad, by two methods,—an application to the court of law, or a bill in equity. In the first case the practice required him to communicate his interrogatories to the defendant;<sup>d</sup> what reason then could be assigned for relieving him in equity from an obligation imposed by obvious principles of justice?

Mr. *Bell*, however, successfully resisted the motion, his argument being, that by the universal practice in equity one party is not entitled to see the interrogatories exhibited by the other, but must judge by the record, to what point the evidence of his antagonist will apply.

The Lord Chancellor (*Eldon*) thus expressed himself :—

“The ancient course in Westminster Hall was, to apply to this court for commissions for the examination of witnesses in foreign countries; and the courts of law borrowed that proceeding from this court; but in no suit in equity has one party been permitted to see the interrogatories exhibited by his antagonist. The constant practice through all time has been to grant commissions without communication of the interrogatories. At law, indeed, that communication is required; but I believe that the courts of law established that practice under an erroneous belief that it prevailed here. The proceeding in aid of an action at law by a commission for the examination of witnesses is far more ancient in this court than in courts of law; and I find no instance in which a production of the interrogatories has been ordered.”

Thus, therefore, the matter stands. Not only is the examination of the witnesses secret, but the interrogatories framed beforehand are to be kept concealed. And nothing short of a power of divination, seldom accorded to practitioners in courts of equity, can enable them, in framing cross-interrogatories, to have anything but a mere general and vague conjecture as to what may be obtained from the examination in chief. We have shown that our neighbours on the north of the Tweed have corrected this evil more than a century and a-half ago. Let us hope that a similar legislative interposition may be looked for ere long in England.

<sup>b</sup> Erskine's Institute, B. 4, T. 2, s. 31.

<sup>c</sup> 2 Swanst. 373.

<sup>d</sup> 1 Tidd's Practice, 312.

## NOTES IN EQUITY.

## TAXATION OF COSTS.—JURISDICTION BY PETITION—AND BY BILL.

UNDER the 6 & 7 Vict. c. 75, the court is not invested with jurisdiction, *upon petition*, to open a settled account between solicitor and client. This can only be done by *bill*. In a late case\* Lord *Langdale*, M. R., said, "That this court has jurisdiction to set aside a settled account, there can be no doubt; but it has no such jurisdiction by petition under the statute. It must be done, if at all, by suit; and in the ordinary course of proceeding in a Court of Equity."

## TAXATION AFTER PAYMENT.

EVEN after payment a taxation may be ordered on petition, if there be what the act calls "*special circumstances*" to justify the proceeding. There must be reasonable ground for such an application—mere insignificant errors or unimportant overcharges in particular items, will not warrant a petition for taxation. To this effect Lord *Langdale*, in *re Drake*,<sup>b</sup> (where a petition for taxation after payment was presented before the expiry of twelve months, and where there was an allegation that the payment had been made under protest—but that allegation was not established by evidence), said, "There is here no '*special circumstance*;' except an allegation of trifling errors in the bill of costs; which are not sufficient to induce me to order the taxation of this bill. I must therefore dismiss the petition, but not being satisfied that the items are correct, I shall do it without costs."

## CONSTRUCTION OF THE STATUTE OF FRAUDS.

## VERBAL AGREEMENT NOT TO BE PERFORMED WITHIN A YEAR.

ALTHOUGH nearly two centuries have elapsed since the Statute of Frauds became the law of this land, the extent to which its provisions have conduced to the ends of justice is still a subject of contention. In our days, when the star of free trade is in the ascendant, it is not to be supposed that the legislature would sanc-

tion provisions which impose so many restrictions on business transactions, and it certainly affords an additional proof of the impolicy of legislative interference with the ordinary dealings of those engaged in trade, when we find that, although this statute was enacted in the 29th of Charles the 2nd, a large proportion of the trading community still continue unacquainted with the provisions of the law, which governs a great number of the contracts daily entered into. The shopkeepers of the metropolis are not, we apprehend, as a class, wanting in the average amount of intelligence, yet it may be doubted, were every shop from Charing Cross to Cornhill visited, if one of the proprietors out of every three would be found aware that a verbal promise to pay the debt of another, or a verbal agreement not to be performed within a year, is void!

The enactment, that no action shall be brought upon any agreement that is not to be performed within the space of one year, unless it be in writing, is one the importance of which it would be difficult to exaggerate, when we consider the number and magnitude of the transactions affected by it; and it is impossible, upon looking back at the reported cases decided upon it, not to perceive that the judges have, on some occasions, been more astute in discovering distinctions, by which an unjust defence founded on this provision of the statute may be defeated, than in ascertaining and giving effect to its true construction. The case of *Donnellan v. Read*<sup>a</sup> furnishes a very remarkable illustration of this disposition on the part of those who at that time presided in the Court of King's Bench, and who determined in that case, that an agreement is not within the statute, provided all that is to be done by one of the parties to it, is to be done within a year. The defendant in that case was tenant to the plaintiff, under a lease for twenty years; and in consideration that the plaintiff would lay out 50*l.* in alterations, the defendant undertook to pay an additional 5*l.* per cent. per annum during the remainder of the term. The alterations were completed within the year, and an action being brought for the increased rent, it was objected, amongst other things, that the contract could not possibly be performed within a year, and must therefore be in writing. The court, however, held, that the argument was not

\* *Barwell v. Brooks*, 8 Beav. 121.

<sup>b</sup> 8 Beav. 123.

<sup>a</sup> 3 Barn. & Adol. 699.

within the statute. "We think," said *Littledale, J.*, delivering the judgment of the court, "that as the contract was entirely executed on one side within the year, and as it was the intention of the parties, founded on a reasonable expectation that it should be so, the Statute of Frauds does not extend to such a case. In case of a parol sale of goods it often happens that they are not paid for in full till after the expiration of a longer time than a year, and surely the law would not sanction a defence on that ground, where the buyer had had the full benefit of the goods on his part." Mr. Smith, in his notes on *Peter v. Compton*,<sup>b</sup> in the 1st vol. of his *Leading Cases*,<sup>c</sup> conclusively shows that the decision in *Donnellan v. Read* is not only not in accordance with *Peter v. Compton*, and the older authorities, and with *Boydell v. Drummond*,<sup>d</sup> and many later cases, but it is at variance with many established principles of construction. The mischief meant to be prevented by the statute was, the leaving to memory the terms of a contract for a longer period than a year, when the persons might die who were to prove it, or they might lose their faithful recollection of the terms of it. As Mr. Smith justly observes, "the danger that witnesses may die, or their memories may fail, seems to be pretty much the same in every case where an agreement is to be established after the year is past by parol testimony; but if there be any difference in the danger of admitting oral testimony after the year, it seems greater in a case where one side of the agreement only has been performed, for in that case the witness would only have to make his tale consistent with what was done on one side; whilst, if the agreement had been partially performed on both sides, a witness giving a false or mistaken account of its terms, would have to render his tale consistent with what had been done by both the contractors." This acute writer also remarks, that the decision in *Donnellan v. Read* makes the word "agreement" bear two different meanings in the same section, as the word when lastly used in the section, clearly means what is to be done on both sides. A recent decision of the Court of Common Pleas, in a case of *Souch v. Strawbridge*,<sup>e</sup> may be considered by some persons as breaking in still farther upon the principle

to be deduced from the earlier cases decided upon this provision of the statute. The facts were as follow:—*Strawbridge* being the father of an illegitimate child, placed it soon after its birth under the care of the defendant, at the rate of one guinea per month. When this was done, the plaintiff suggested, that the agreement should be for a year, but the defendant objected to limit the agreement to a year, on the ground, that a guinea a month was a high rate of payment for so young a child, and that the same rate of payment should continue when the child got older. It was therefore agreed that the plaintiff should continue to maintain the child at the rate of a guinea a month so long as the defendant should think proper. The child was kept by the plaintiff upon this footing for three years, during which period various sums were paid by the defendant on account, leaving a balance of 15*L.*, to recover which sum this action was brought. On the part of the defendant it was objected, that the contract was not to be performed within one year from the making thereof, and not being in writing, it was a contract within the statute. The court, however, was of opinion, that the statute pointed to a contract which must necessarily extend beyond the year, but that there was nothing in this agreement necessarily extending it beyond the year, inasmuch as the defendant might put an end to it at any time. And *Cresswell, J.*, observed, that it was just the same thing as if a man had taken a lodging as long as he pleased, at a given rate per month, which he could put an end to at any time. The late *C. J. Tindal*, concurring with the other members of the court, that the case was taken out of the statute, because the agreement depended on a contingency—namely, the determination of the defendant's will—also founded his judgment on another and an independent ground, viz., that the action was not prohibited by the statute, inasmuch as it was founded on an executed consideration—the actual support rendered by the plaintiff to the child at the defendant's request. The provision that no action should be brought to recover damages for the nonperformance of a contract, the learned Chief Justice said, was widely different from an action supported by the ordinary evidence of an executed consideration. The other judges of the court do not appear to have expressly adopted this view of the case,—their judgments proceeding exclusively on the ground, that

<sup>b</sup> Skinner, 353.<sup>c</sup> P. 143.<sup>d</sup> 11 East, 159.<sup>e</sup> 15 Law J. 170, C. P.

the continuance of the contract beyond a year, depended on a contingency which took it out of the statute.

The case which appears at first sight to be most like, and the decision most at variance with that of *Souch v. Straubridge*, is the well-known case of *Birch v. Earl of Liverpool*,<sup>1</sup> where the defendant's wife hired a carriage at the rate of 90 guineas per annum for five years, and although it was proved, that by the custom of the trade such a contract was determinable at any time upon payment of a year's hire, yet the Court of Queen's Bench held, that the case was within the statute, and that the contract ought to have been in writing.

The cases decided upon the provisions of this statute, could not now be comprised in a volume of ordinary bulk : to classify, to analyse, and compare them, would perhaps be a serviceable labour. To reconcile all the decisions would be impracticable, and therefore, the sooner the subject is reconsidered by the legislature, the more satisfactory to all who are interested with the administration of justice.

## NEW STATUTES, EFFECTING ALTERATIONS IN THE LAW.

### IMPORTATION OF CORN.

9 & 10 VICT. c. 22.

[WE usually, and indeed almost invariably, confine our selection of the statutes to such as relate to the administration of justice or the laws affecting property; but must make an exception in favour of the Corn Law Act, on account of its vast importance, and more especially as it will occupy but little space. It is as follows :—

An act to amend the Laws relating to the Importation of Corn. [26th June, 1846.]

*After the passing of this act, till 1st Feb. 1849, the duties set forth in the Schedule shall be payable upon all corn, &c., imported.—On and after 1st Feb. 1849, the duties herein named shall be paid.—Whereas an act was passed, (5 & 6 Vict. c. 14,) intituled, “An Act to amend the Laws for the Importation of Corn :” And whereas it is expedient that the duties now payable upon the importation and entry for home consumption in the United Kingdom and in the Isle of Man respectively of corn, grain, meal, and flour should be altered, and that the act herein-before recited should be amended as herein-after is expressed: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiri-*

*tual and temporal, and Commons, in the present parliament assembled, and by the authority of the same, That from and after the passing of this act, in lieu of the duties now payable upon the entry for home consumption in the United Kingdom, and upon the importation into the Isle of Man, of corn, grain, meal, and flour, there shall be levied and paid unto her Majesty, her heirs and successors, on all corn, grain, meal, and flour already or hereafter to be imported into the United Kingdom or the Isle of Man from parts beyond the seas, and entered for home consumption after the passing of this act, the duties set forth in the schedule to this act annexed, until the first day of February which will be in the year of our Lord one thousand eight hundred and forty nine; and on, from, and after the said first day of February, one thousand eight hundred and forty nine the following duties; (namely,)*

*Upon all wheat, barley, bear or bigg, oats, rye, pease and, beans, for every quarter 1s.; and so in proportion for a less quantity :*

*Upon all wheat meal and flour, barley meal, oatmeal, rye meal and flour, pea meal, and bean meal, for every cwt. 4½d; and so in proportion for a less quantity.*

*2. Duties payable in the United Kingdom shall be levied pursuant to 8 & 9 Vict. c. 90.—And be it enacted, That the several duties hereby imposed, and leviable in the United Kingdom, shall be levied, collected, paid, and applied in such and the same manner in all respects as that in which the duties imposed by an act passed in the session of parliament held in the eighth and ninth years of the reign of her present Majesty, intituled “An Act for granting Duties of Customs, are directed to be levied, collected, paid, and applied.*

*3. Duties payable in the Isle of Man shall be levied pursuant to 8 & 9 Vict. c. 94.—And be it enacted, That the several duties hereby imposed, and leviable in the Isle of Man, shall be levied, collected, paid, and applied in such and the same manner in all respects as that in which the duties imposed by an act passed in the session of parliament held in the eighth and ninth years of the reign of her present Majesty, intituled, “An Act for regulating the Trade with the Isle of Man,” are directed to be levied, collected, paid, and applied.*

*4. Average prices to continue to be made up according to 5 & 6 Vict. c. 14, and duties under this act to be regulated thereby.—And be it enacted, That the average prices, both weekly and aggregate, of all British corn, shall continue to be made up, computed, and published, and the certificates of the aggregate average prices shall continue to be transmitted, at the times and in the manner required by the said herein-before recited Act for Amending the Laws for the Importation of Corn; and the rate and amount of the duties set forth in the schedule to this act shall be regulated and governed, according to the scale in the said schedule contained, by the aggregate average prices so to be made up, computed, published, and transmitted, in the same manner as the rate and amount of the*

<sup>1</sup> 9 Barn, & Cres. 392.

duties imposed by the said herein-before recited act are by that act directed to be regulated and governed; and at each of the several ports in the United Kingdom and in the Isle of Man the aggregate average prices, the certificate of which shall have been last received previously to the passing of this act by the collector or other chief officer of customs at such port as by the said herein-before recited act is directed, shall be taken to be the aggregate average price by which the duties hereby imposed shall be governed and regulated at such port, until the certificate of some other aggregate average price shall have been received by the collector or other chief officer of customs at such port.

5. *Repeal of part of 5 & 6 Vict. c. 14.*—And be it enacted, That so much of the said act herein-before recited as prohibits the importation into the United Kingdom for consumption there of any corn ground be repealed.

6. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of parliament.

#### SCHEDULE TO WHICH THIS ACT REFERS.

If imported from any Foreign Country :

##### Wheat :—

Whenever the average price of wheat, made up and published in the manner required by law, shall be for every quarter	s.	d.
under 48s., the duty shall be for every quarter	10	0
48s. and under 49s.	9	0
49s. and under 50s.	8	0
50s. and under 51s.	7	0
51s. and under 52s.	6	0
52s. and under 53s.	5	0
53s. and upwards	4	0

##### Barley, Bear or Bigg :—

Whenever the average price of barley, made up and published in the manner required by law, shall be for every quarter	s.	d.
under 26s., the duty shall be for every quarter	5	0
26s. and under 27s.	4	6
27s. and under 28s.	4	0
28s. and under 29s.	3	6
29s. and under 30s.	3	0
30s. and under 31s.	2	6
31s. and upwards	2	0

##### Oats :—

Whenever the average price of oats, made up and published in the manner required by law, shall be for every quarter	s.	d.
under 18s., the duty shall be for every quarter	4	0
18s. and under 19s.	3	6
19s. and under 20s.	3	0
21s. and under 22s.	2	0
22s. and upwards	1	6

##### Rye, Pease, and Beans :—

— For every quarter,

A duty equal in amount to the duty payable on a quarter of barley.\*

##### Wheat Meal and Flour :—

— For every barrel, being 196 pounds,

A duty equal in amount to the duty payable on 38½ gallons of wheat.

##### Barley Meal :—

— For every quantity of 217½ pounds,\*

A duty equal in amount to the duty payable on a quarter of barley.

##### Oatmeal and Groats :—

— For every quantity of 181½ pounds,†

A duty equal in amount to the duty payable on a quarter of oats.

##### Rye Meal and Flour :—

— For every barrel, being 196 pounds,

A duty equal in amount to the duty payable upon 40 gallons of rye.

##### Pea Meal and Bean Meal :—

— For every quantity of 272 pounds,

A duty equal in amount to the duty payable on a quarter of pease and beans.

If the produce of and imported from any British possession out of Europe ;

Wheat, barley, hear or bigg, oats, rye, pease, and beans, the duty s. d. shall be for every quarter . . . 1 0

Wheat meal, barley meal, oatmeal, rye meal, pea meal, and bean meal, the duty shall be for every cwt. . . . . 0 4½

#### NOTICES OF NEW BOOKS.

*A Letter to Lord Worsley on the Burthens affecting Real Property arising from the Present State of the Law, with Reasons in favour of a General Registry of Titles.*  
By HENRY SEWELL, Esq. London : H. Butterworth, 1846. Pp. 110.

THIS is a very able pamphlet on the present state of the law of real property. Mr. Sewell takes a very independent, and in several respects, a new view of the various questions which have been long pending amongst law reformers in regard to the diminution of the trouble and expense of investigating titles and conveying estates.

First, Mr. Sewell maintains that all the

\* The debates in parliament on the 14th instant, show that a mistake has been made in this part of the act. By the 4th section, the average price of all British corn is to be taken in the same manner as under the former act, by which the rye, pea and bean averages regulated the duties on each respectively, but in this schedule the duty on these articles is to be equal in amount to the duty on barley :—thus contradicting the 4th section. The late period of the session has prevented the correction of the error.

alterations which have been made in this department of the law during the last twelve years have produced no substantial good; and secondly, he recommends a general registry of *titles*, as distinguished from a registry of *deeds*.

1. Where so many efforts have been made, it is perhaps too much to say that "no substantial good" has been affected; but we agree with Mr. Sewell, that these alterations have been far too highly estimated.

"It is now," says Mr. Sewell, "many years since the commissioners of the law of real property closed their inquiries, having, as it was supposed, effected everything which could be effected in the way of investigation, and recommended everything which could be recommended in the way of amendment. Some of their most important proposals, however, yet remained untried.

"Some of their suggestions have been adopted. Certain ceremonies in the mode of barring entails, and effecting the transfer of the interests of married women by fines and recoveries have been abolished; and other forms simpler and less expensive have been substituted. The period within which dormant claims may be enforced has been abridged—a measure in some respects questionable in point of principle—and which has been found wholly inefficacious as far as it was intended to curtail the difficulty and expense of conveyancing. The law of dower has been altered to the detriment of married women. New forms for the execution of wills have been invented, opening the door for nearly as much difficulty and doubt as the measure was intended to prevent. Other changes of a like kind have been introduced. I have no intention to dwell upon them in detail. As to some, I cannot think that we have gained by the alteration. But as a whole, may it not at once be said, without hesitation and without any charge of presumption, that they have wholly failed of their object? What the public required (and they were the real parties complaining) was diminution of the inconveniences which they practically felt,—greater certainty and quickness in the transaction of their affairs, and diminished cost.

It will perhaps be said that these salutary effects have been counteracted by an evil principle residing in that branch of the profession of which I am a member,—that we have set ourselves to work to maintain our own interests, by thwarting the natural good tendencies of the measures to which I have adverted. An imputation of this kind is wholly groundless. We have no desire to tax the community for our exclusive benefit, or to uphold a system injurious to the public for the sake of mere selfish objects.

"Some later changes in the law appear to have been founded on the latter assumption. Acts of parliament have been passed grounded

on the implied notion that prolixity, and consequent expense, in the preparation of deeds, is attributable wholly to an appetite for costs. I disclaim and deny the truth of such an imputation. Probably when the legislature has practised a little more the art of conveyancing, by inventing forms of words to convey particular meanings contrary to their natural import, it will be better able to appreciate the difficulty of the task, and be more disposed to allow that modes of expression long used and approved of, and which have acquired certain and understood meanings and rules of construction cannot and ought not to be roughly thrust aside as mere useless formalisms,—at least, so long as the system to which they belong is suffered to continue. They will learn the danger of attempting to substitute forced and false rules of construction, arbitrarily imposed by act of parliament, for the known and universally understood laws of grammar and common sense.

"It is one (and not the least) evil of this kind of legislation, that it misleads people as to the true nature and character of the evil to be contended against. Were I anxious to maintain my profession at the expense of the public, I should desire nothing more heartily than the multiplication of acts of parliament of this kind. They would sow a prolific seed of doubt and litigation. They would create a diversion precisely in that direction which would best suit our own selfish interests. Every session would breed some new code of legal grammar,—some legislative dictionary of legal science, until in a short time we should almost have destroyed the power of words themselves to effectuate their true end, of expressing clear and definite ideas.

"Besides this, mere prolixity in deeds is not the evil of which the public complain. It is but one symptom of the evil, and that comparatively slight. The bill of costs indeed does include charges proportioned to the length of deeds, but it includes a great deal more; and in most, if not all cases, the quantum of costs is determined more by the integrity and conscience of the practitioner in the general conduct of business, than by the mere rule of the length of deeds. In fact, the length of deeds would, by any forced legislative attempt to alter their phraseology, become an utterly unimportant item. Any one conversant with the practice of conveyancing knows, that, even were their length forced by some legislative act into the compass of a nutshell, the bill of costs may be made to swell in other directions beyond the reach of parliament.\* Nor is it at all a fair view to take of the matter, to throw an imputation of this kind upon the legal profession, as if they required the strong arm of law to keep them within the limits of honesty and good conscience in their modes of practice. The question really to be determined between

\* "I have known cases of conveyances in prescribed forms under church building acts, exhibiting all the evils I have mentioned in an aggravated form."



them and the public is, whether, looking to the labour, the skill, and the responsibility involved in their business, their remuneration is excessive." If the fact be not so, the mere point of the comparative length of deeds is of small importance. The labourer is worthy of his hire; and if not under one form or by one process, then by another, the lawyer will receive and be entitled in some way to obtain his fair equivalent. If, however, from want of conscience, we overpay ourselves by our present system, that is a vice not to be cured by act of parliament. If checked at one point, it will break out in another.

"*Naturam expellas furcâ tamen usque recurret.*"

"I have ventured to say that no substantial good has been effected by the real property commissioners, or the measures founded on their suggestions, still less by any subsequent legislation. I mean, of course, to confine this remark to the general results of these measures so far as they have reached the public at large. I do not imagine that the general expense of transactions relating to real property has in any degree been diminished; on the contrary, I think it has increased, and is still increasing, and this by the inevitable force of circumstances. The affairs of men in the present day become extremely complicated, and this complication necessarily entangles the titles to real property. Every succeeding year adds to the evil. Every mortgage, charge, bankruptcy, will, or settlement, is the parent of a whole progeny of transactions; and it is matter of experience that titles, especially those which are undergoing frequent changes, as many do, are becoming more and more involved; whilst every step taken in dealing with them becomes attended with a constantly growing expense.

"*Etas parentum pejor avis, tulit  
Nos nequiores, mox daturos  
Progeniem vitiosorem.*"

2. Mr. Sewell, after pointing out the various difficulties which now exist in making out a clear title to real property, and the great expense attendant upon proving such title, proceeds to state and support his own views of the remedy which may be applied by a registry of titles.

"I wish," he says, "to distinguish clearly a registry of titles from a registry of deeds. I cannot satisfy myself of any great object to be answered by mere registration of deeds. I have had some experience of a registry of deeds in Ireland, and cannot say that I have found much practical benefit from it. There is just as much trouble, expense, and delay in completing a purchase in Ireland as in England, except (if I may dare to say so without disrespect to Irish conveyancers) that they are less careful and accurate in their practice. I am not sufficiently conversant with the practice in the register counties in England, as Middlesex and Yorkshire, to enable me to offer an opinion upon it. But such as that experience has been,

it leads me to the belief that in no essential particular is there any difference in their favour. One only point seems to be arrived at by the registration of deeds, which is the publicity of transactions. It does not profess to alter the nature of the evidence on which titles are to depend. Indeed, I am strongly inclined to think, that mere registration of deeds is but the incumbrance of another form and an additional expense.

"Registration of titles, on the other hand, if practicable, completely changes the evidence of the title itself. Its proper effect would be to exhibit and be in itself a full and perfect sign or badge of ownership, which the law in all its courts (whether called by the name of law or equity) would recognise. It would supersede the use of deeds both as means of transmitting rights and as symbols of evidence. It would render it unnecessary to refer to possession as a groundwork of titles, for the registry would be in itself conclusive. It would get rid of the equitable doctrine of notice as a basis of derivative rights, for the registry would of itself operate so as to give them effect. It would in short work a radical cure for the mischiefs we now experience. If such a system could be brought into operation, its value must be self evident.

"The objections which at first sight may occur to it are these:—

"First.—The impracticability of constructing it.

"Secondly.—The impossibility of adapting it to the present state of things.

"Thirdly.—The absolute and irresponsible power which for such a purpose must be lodged in a registering officer.

"Fourthly.—The public disclosure of private transactions, particularly mortgages.

"Fifthly.—The opportunity for fraud.

"The first question is obviously the most important. If it be practicable to construct such a registry, its advantages are so evident as to reduce the other questions merely to matters of detail and arrangement. They present no insurmountable objections.

"To point out evils, without suggesting a remedy, is worse than useless. It merely produces dissatisfaction; and therefore, having so far ventured to give an opinion as to the faults of the system, I have imposed on myself the necessity of offering some suggestions in the way of amendment.

"The first step in a general registry of titles must of course be to obtain perfect surveys or maps of the whole property of the kingdom. Nor will this be difficult. By far the greater part is already complete. The tithe commutation maps include all the titheable parts. A very little filling up, enlargement, and correction would make them serviceable for a wider purpose. The expenses already incurred about them will in this manner be turned to very useful account.

"One of the principal difficulties in the art of conveyancing is the want of some adequate mode of describing the property to be con-

veyed. We describe it by metes and bounds, by estimated quantities, by the names of fields or farms, its occupier, its parish, or other local subdivision. In short, by all its local circumstances. But words are very imperfect vehicles of this kind of idea. In all ordinary transactions we resort to the far more intelligible and simple mode of delineation by map or survey. We are in the habit frequently of employing the very same machinery in deeds, either as a substantive or an auxiliary mode of description. It is found extremely convenient. Common language for such a purpose is necessarily loose and frequently inaccurate. The description of locality is after all nothing but a description of the different relations of place; and these relations cannot be expressed with any approach to certainty, except in the visible form of lines drawn upon maps."

And further on, the author remarks that—

"A registry of titles would of course be ineffective without in some measure disclosing those dealings with property. It is a question of debate how far they ought to be fully described, so as to be made notorious, in order, it is said, to prevent fictitious credit. There may be a difference of opinion on this point. As far as I can judge, the general prejudice is in favour of secrecy; and I think any scheme of registration which should endeavour to establish an opposite practice would not meet with success. With this view, it seems to me very practicable to make a public registry simply describe by a single entry, as by the term *caveat*, the fact of hypothecation, leaving the terms and particulars of each hypothecation to be described by its own distinct instrument, fitted to the registry by some symbol of reference, and preserved either separately and secretly on files, or in some other simple way. This plan would answer the purpose of placing a visible legal check on the alienation of the property incumbered, and yet without such a disclosure of private transactions as would be objectionable even to the most fastidious owner of an estate. Compare the indistinctness of such a notice with the exposure of private affairs constantly happening through the offices of solicitors, conveyancers, stationers, and other persons through whose hands private deeds now pass."

"A registry of the nature which I have described would require the direction of a really efficient responsible officer conversant in the law of real property. Many such are to be found at the bar amongst practising conveyancers,—men who would be as well or better qualified to pronounce judicially upon points of real property law, even than the highest equity judge. Men of this class must of course be tempted from a lucrative profession by corresponding remuneration; but the superior ease, dignity, and certainty of income attending a judicial office would make up for some loss of income.

"A registering officer presiding over such a district court would be virtually a judge in the first instance in matters of real property. His operations upon the registry would be judicial acts, and would have, if unappealed against, and unreversed, the effect of law. In cases of doubt or dispute, a very simple machinery might provide a remedy for enabling parties thinking themselves aggrieved to appeal.

"And is not the establishment of such a judicial officer agreeable to the evident wants of society? Is not this indicated by that constant recurrence to counsel which I have mentioned, as the ordinary practice in conveyancing? What is this but an attempt to reach in an imperfect and extra-judicial manner a formal sentence upon the validity of titles, upon which men may practically act? Such a practice may be regarded as a sign indicating the remedy required. If the state of the law is such as to require these *responsa prudentium* before men can venture to complete purchases or mortgages, it seems to me incumbent on the legislature to provide them in a formal authoritative shape—for the poor as well as the rich—in small affairs as well as large ones.

"Nor would the expense be an objection, as the salary of a judge of this kind would but represent the income now paid to him in one way or another by the public in the shape of casual fees. Indeed, in point of expense, the public would, upon the whole, unquestionably be prodigious gainers by such an arrangement.

"I am not insensible to the difficulties and objections to such a measure; but the question lies between a choice of evils. Either we must remain as we are, merely applying minor remedies, which will produce no substantial improvement;—or we must try the effect of a registration of deeds, of the inefficacy of which I think we have already sufficient experience, and against which, as involving in its very principle of indiscriminate notice too much exposure of private affairs, I think there would be an insurmountable prejudice;—or (which seems to be the only remaining alternative) we must adopt a registry which shall have a judicial operation."

"The whole machinery of such a registry would in fact be worked by the presiding mind of the registering officer, a judge whose acts or omissions would be open to correction by superior courts. If such a system were to have the effect of drawing off some portion of the jurisdiction, which now endangers the whole existence of the Court of Chancery, such a result would not, I think, be without its advantages. It might have the effect (which I think would be a salutary one) of restoring some of the jurisdiction over real property to our common law courts, for the remedy by *mandamus* would be as applicable to a registrar of real property as to any other public officer,—and the return to such a process would raise questions of title in a simpler and less expensive form than the present method of a chancery suit. A mere caveat on the registry

during the suspense of an appeal would be sufficient to save the rights of appellants."

Mr. Sewell thus concludes his work :—

"I have not perhaps sufficiently pointed out the difference of operation between a general registration of deeds, and a general registry of titles as regards the disclosure of incumbrances. Such a disclosure is the very object and principle of a registration of deeds. It forms no necessary part of a registry of titles. On the contrary, the object of the latter is simply to exhibit the real beneficial ownership; and it only involves a notice of incumbrances, so far as may be necessary to preserve the rights of incumbrancers. With a registry superintended by a responsible judicial officer, it may perhaps be unnecessary that any public notice of hypothecation should be exhibited on the face of the registry. A private registry would answer the purpose of the caveat equally well; or inasmuch as the transfer of ownership would no longer be an act resting on the parties, but on the public officer, it would be unnecessary to give general publicity to the register, which would in that case only be accessible by parties having interests in the property. In this respect it would resemble the inscription in the bank books of the title to property in the public funds.

"I have not noticed in my letter several kinds of property coming under the general description of real property, and governed by similar rules, such as manors, advowsons, franchises, offices, &c. The important question is as to the title to the soil. The other class of rights which I have mentioned are comparatively few and unimportant; but whatever truth there may be in my remarks is equally applicable to one species as to another. If the principle of a general registry of titles as regards the ownership of the soil were adopted, it would be very easy to adapt it to every other kind of interest coming under the denomination of real property."

We think the author has not quite succeeded in showing how his plan of registering titles can be satisfactorily carried into effect in lieu of a registry of deeds.

## NEW BILLS IN PARLIAMENT.

### PRIVATE BILLS.

THIS is a Bill for making Preliminary Inquiries in certain Cases of Private Bills. It recites, that it is expedient that facilities should be given for procuring more complete and trustworthy information previous to inquiries before either house of parliament, on applications in certain cases for Local Acts; and it is therefore proposed to be enacted,

1. That in any case where it is intended to make an application to parliament for an act for the establishment of any waterworks, or for draining, paving, cleansing, lighting, or other-

wise improving any town, district or place, or for making, maintaining or altering any burial-ground or cemetery, or for continuing, altering, or enlarging any of the powers or provisions contained in any act or acts relating to any of the purposes aforesaid, a notice, in writing, of such intention to apply to parliament in the next ensuing session for an act for any of the above objects, shall, on or before the last day of November in each year, be sent or delivered to the office of the commissioners of her Majesty's woods, forests, land revenues, works and buildings; and such notice shall be signed by some solicitor, or other person duly authorized in that behalf, and shall be accompanied with a copy of the proposed act, and with such plans, sections, books of reference or other documents, if any, as are required by the standing orders of either house of parliament to be deposited at any public office.

2. That, in any case where such notice as aforesaid shall have been given to the said commissioners, it shall be lawful for the said commissioners, on being satisfied with the security for payment of the expenses, within one calendar month from the time of their receiving such notice, to appoint, by writing under their hands, a person of competent skill to proceed to such town, district, or place, and make such local examination and survey of the district which such proposed act will effect, and of the neighbourhood thereof, and such inquiries relative to the extent of the provisions of the proposed act, and to investigate such other matters relating thereto, as the said commissioners shall order; and such surveying officer as aforesaid shall report thereupon to the said commissioners, and such report shall be laid before both houses of parliament within one calendar month after the meeting thereof, and no further proceedings, beyond the second reading of the bill for such proposed act, shall be taken in any such case until such report has been so laid before the said houses of parliament.

3. That such surveying officer shall give fourteen days' public notice of the time and place when and where he will attend within such town, district, or place, for the purpose of making such examination by advertisement in the public papers usually circulated in the town, district, or place, or by affixing such notice on the public buildings or places where public notices are usually affixed, or in such other manner as shall appear to him to make his appointment to be generally known in such town, district or place.

4. That such surveying officer shall be empowered to summon before him, and to examine upon oath, any person or persons whose name or names shall be signed to any notice of an intended application to parliament sent or delivered to the commissioners of her Majesty's woods, forests, land revenues, works and buildings, under the provisions of this act, hereinafter called the promoters, or any person on their behalf, and to require them to produce copies of all such surveys, plans,

## REPORT ON RAILWAY ACTS.

sections, estimates, and other documents relating to such intended application as are ordered to be deposited at any public office, in compliance with any such standing orders of the House of Commons; and such surveying officer may require any overseer or other person having the custody of any map or survey made in pursuance of the provisions of any act of parliament, or of any book containing any rate made for the relief of the poor in any parish, or for any purpose or place wholly or in part within any district over which such examination shall extend, to produce such map, survey, or book, and to allow the same to be inspected by such surveying officer; and such surveying officer shall have the power to administer an oath to such overseers, or other persons, and to the promoters, and to any other person examined on their behalf, and to any persons who may present themselves before such surveying officer for examination by him; and all such persons so examined shall be required to answer upon oath all such questions as may be put to them by such surveying officer, touching any matter upon which such surveying officer may deem it necessary to examine such persons, in pursuance of the duties imposed upon him under the authority of this act; and any such person being duly summoned by such surveying officer who shall wilfully neglect or refuse to attend such summons, or to produce such plans, sections, maps, books, or other documents, as he may be required to produce under the provisions hereinbefore contained, or to answer upon oath such questions as may be put to him by such surveying officer, shall be liable to forfeit and pay a penalty not exceeding 5*l*.

5. That such penalty may be recovered before any justice having jurisdiction within such town, district, or place, and on conviction of the offender, and in default of payment of any such penalty, such justice shall be empowered to cause the same to be levied by distress and sale of the goods and chattels of the offender by warrant under the hand and seal of such justice.

6. That all the costs, charges, and expenses attending the said local examination and survey, together with such sums as the said commissioners shall fix for the remuneration of the said surveying officer, shall be paid by the promoters of the said intended application, and the amount of such expenses shall in all cases be ascertained by the said surveying officer; and it shall be lawful for the said commissioners, previous to the appointment of any such surveying officer to make an examination under the provisions hereinbefore contained, to require the said promoters to deposit any sum of money, or to give such other security for the payment of the said costs, charges, and expenses, as to the said commissioners shall seem fit; and the certificate of the said surveying officer, certifying the amount of expenses so incurred in such local examination, shall be taken as proof in all proceedings at law and in equity of the amount of the costs incurred in such examination.

THE Select Committee appointed to inquire whether, without discouraging legitimate enterprise, conditions may not be embodied in Railway Acts better fitted than those hitherto inserted in them to promote and secure the interests of the public;—have considered the several matters to them referred, and agreed to the following Resolutions:—

1. That it is expedient that a department of the executive government, so constituted as to obtain public confidence, be established for the superintendence of railway business.

2. That all proposals for the construction of new lines of railway, or for extensions or branches of existing lines, or for the amalgamation of lines already authorised with other lines or with canals, or for leasing railways or canals to railway companies, or for any other purpose relating to railways, for which the sanction of parliament is required, together with plans, sections, books of reference, and other papers required by the standing orders, should be laid before such department.

3. That the department should test these plans, sections, &c., through its own engineers and officers, by means of local information or otherwise, as it may think fit, and should inquire into and report to parliament upon the particulars required upon the standing orders to be specially reported upon by committees on railway bills; and that no committee on any railway bill should inquire further into such particulars, unless by the special order of the house.

4. That this department should also inquire into the compliance with the standing orders, and how far the same, if not complied with in any particular cases, ought to be dispensed with, and should report thereupon to parliament.

5. That the department should receive representations from local bodies, or from individuals, for or against any proposed line, whether such representations have reference to matters of public or private interests, and should hear the parties, and should make such inquiries on the spot or otherwise, as they may think necessary, and should report the facts, and their opinion thereupon, to parliament.

6. That the department should report in each case what in its judgment would be a proper tariff of fares and charges.

7. That all bills for effecting any of the objects enumerated in the foregoing resolutions should be submitted to the department for examination and approval; and that it should be part of the duty of the department to enforce uniformity in the preparation of such bills, as far as circumstances will allow.

8. That no bill for carrying any such proposal into effect should be introduced into parliament without having the previous sanction of such department.

9. That the department should be charged with a general supervision of all railways, and

canals in any way connected with railways; and that for this purpose it should possess the powers and execute all the duties now possessed and exercised by the Board of Trade, and such additional powers as may be necessary to enforce any regulations made from time to time for the accommodation and interests of the public.

10. That the department should require from every railway company periodical returns, according to an uniform plan, approved from time to time by the department, and that it should annually lay before parliament a report, giving the above returns, or abstracts thereof, together with such details and observations upon the state and progress of the railway system as it may deem useful.

7th August, 1846.

## THE LAW STUDENT.

No. 7.

### LEGAL EDUCATION.—ARTICLED CLERKS.

In our number of the 18th July, we inserted the Address of the proposed Articled Clerks' Society to the Lord Chancellor and Master of the Rolls, and their lordships' answer. Amongst other statements in the address it was urged—

"That there was *no institution* existing either in the metropolis or elsewhere receiving the general support of the profession, calculated to assist the articled clerk in his studies or to aid him in his preparation for the examination."

To this we appended a note, intimating that so long ago as 1833, lectures were established at the Law Institution, expressly for the articled clerks, and they were admitted to the library and a room appropriated for discussion."

We have received from "A Member of the Committee" the following reply to our observation:—

"Education and the improvement of the profession have always been the aim of your periodical, and it is to be hoped that the wishes you have so warmly advocated may, ere long, under the influence of Mr. Wyse's committee, and the public attention which, on the appearance of their 'blue folio,' must be excited to the point, be fairly and fully accomplished. There is, however, one point to which you have drawn our attention as being erroneous. We regret that this should be the case, but fear, though we would wish it otherwise, that we are but too correct. As a subscriber to the lectures, and in virtue thereof, a member of the discussion society, I have to express my gratitude to the Law Society for admission to those two advantages; but the library, application in the office at Chancery Lane has informed me,

is closed to me—this great privilege is denied because I am neither under articles, nor assigned to, nor again in any way placed with, a member of the institution. This appears to me a hard position; I am, as not being admitted, of course perfectly unable to become a member myself, thus I am punished because another party, over whom I have no control, declines a measure of the greatest advantage to me. Of what use are lectures citing an *infinity of authors and reporters*, or discussions requiring reference thereto, unless I have the means of getting at them."

It is then proposed, that the plan of the lectures should be adopted with regard to the library, and a difference made in the subscription of the articled clerks of members and others.

"None (it is said) could complain of the extra expense, it would be quite fair, whereas a total exclusion is considered very hard indeed. As to the effect upon the pupils, it needs no eloquence to prove that they must be better fitted for the examination; and the object of the society would thus be carried out, the examination might be increased in difficulty without a shadow of foundation for complaint of no opportunities for improvement, when, for a trifle per annum, such a library as that of the Law Institution was open to them.

"It does then appear to us that the Law Institution, as long as the library is closed to articled clerks, &c. of gentlemen *not* members,—thus virtually depriving us of the means of profiting by the lectures or discussions, and therefore of the inclination to avail ourselves of them—so long, it cannot be said that there is an institution affording much facility to the articled clerk."

Some remarks are then made on the number of subscribers to the library and the lectures, with reference to the number of articled clerks in the metropolis, estimated as not far short of 2,000, and it is observed,—

"That out of the 1,400 members of the Law Society, U. K., scarcely more than 400 are country members, and yet the number of attorneys in the country, being estimated at 6,000, an immense proportion of their articled clerks on their arrival in town, 'get into offices where there exist no means of gaining admission to the benefits of the library.'"

We think our correspondent will find, that the articled clerks of almost all the country attorneys may have the benefit of the library, for the society includes as members nearly all the London agents, and articled clerks who come to them to complete their service (by a

\* It would be sufficient, we presume, to refer to the leading cases cited in support of the doctrines expounded.—Ed.

liberal interpretation of the rule) are admitted as the articulated clerks of members. The privilege of admission to the library belongs to the members only, and there is no power in the charter to admit others. It is unfortunate that our correspondent has chosen an office in which none of the firm think proper to belong to the institution. The Inns of Court admit only their own students to the library, although their funds may be considered of a more public nature than those of the Law Society. The members who raised 60,000*l.* in shares of 25*l.* each, have liberally given up their shares and reduced the admission fee to 15*l.*, and the annual subscription to 2*l.*, so that the rest of the profession cannot complain of the present arrangement. A new society could scarcely be formed on a more moderate scale. If those who think that more should be done for the benefit of the profession, would join the institution, its means and power would be increased, and ultimately everything might be accomplished that can possibly be desirable. A larger number, or new courses of lectures might be instituted, the library enlarged, and even the present moderate subscription further reduced. We understand that the improvements of the society are not standing still, for the council have purchased two houses adjoining the hall, and intend, amongst other things, to build a large room expressly for articulated clerks.

## SELECTIONS FROM CORRESPONDENCE.

### SMALL DEBTS BILL.

SIR,—I beg to trouble you with a few hasty observations respecting the County Courts Bill.

I am sure it must be matter of astonishment to most members of the profession, as well as to myself, that this bill should be attempted to be passed in its present shape.

The framers of the measure cannot possibly be acquainted with the lamentable exhibitions of the evil dispositions and infirmities of human nature continually exemplified in courts of requests, concerning matters of 30*s.* or 40*s.* value, otherwise they never would sanction the extension of so demoralising a system to 20*l.* It will in fact operate as a premium upon perjury and fraud, and no person will be safe. 20*l.* is a large sum to a numerous portion of the population, and the amount will comprise matters of the utmost importance, and therefore it should, at all events, be optional to sue in the superior courts, even if it were only to avoid the disputes that will be constantly arising as to the

limits of the prescribed distance of twenty miles, and the place where the action arose. Besides the public little know what an enormous and unnecessary expense will be thus caused to the country. I say unnecessary, because by reducing the fees out of purse in small actions, the proceedings in the superior courts might be so modified as to answer every beneficial purpose.

Then, as regards the profession, the bill, by excluding attorneys and allowing any persons to act in their stead, will be the most monstrously unjust law that ever was conceived. Why are attorneys so peculiarly restricted and so outrageously taxed, if they are to have no advantage in this respect over other persons?

Is it for the benefit of the community that professional learning and experience is to be thus annihilated? But I fear it is now too late to effect any alteration of the evils in question.

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14th August, 1846.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Courts of Equity.

## VII. LAW OF ATTORNEYS AND SOLICITORS.

### CHAMPERTY.

The court will not entertain a bill to enforce an agreement to allow a solicitor, out of a fund to be recovered by him, a commission by way of bonus for his trouble and responsibility. *Strange v. Brennan*, 32 L. O. 350.

### CLIENT.

See *Priority of Incumbrance*.

### COSTS.

See p. 394, *post*.

### INFANT.

The mother of an infant employed a solicitor to prosecute a suit on behalf of the infant. The person first named as next friend in the cause died; the mother subsequently discharged the solicitor, and after such discharge he amended the bill, and named a new next friend, without the mother's sanction. The Vice-Chancellor *Wigram* ordered that, on payment by the mother to the next friend of the costs incurred by him in the next suit, the next friend should be removed and another appointed, and that the solicitor should pay the costs of the application and of the new appointment. *Lander v. Ingersoll*, 4 Hare, 596.

### MASTER'S CLERKS.

*Duties of chief and junior.*—Under the Chancery Regulation Act, (3 & 4 W. 4, c. 94,) the Master has no authority to transpose the duties of his clerks, and to depute the business of the chief clerk to be habitually performed by the junior or copying clerk. In the matter of the suitors. *In re Whiting*, 32 L. O. 131.

## PRIORITY OF INCUMBRANCES.

**Notice.**—In the year 1805, *A.*, who was a solicitor, executed to *M.* a mortgage of a certain property, to which he was entitled in right of his wife. In the following year, 1806, *A.* executed a second mortgage of the same property to *N.*, in the transacting of which loan *N.* employed *A.* as her solicitor and agent. The mortgage of 1806 was duly registered, but the earlier mortgage of 1805 was not. *Held*, that *N.* was affected with notice of the mortgage of 1805, in consequence of her having employed *A.* as her solicitor, and therefore was not entitled to rely on the priority derived from the registry of the mortgage of the year 1806.

If a party, in the matter of a purchase, employ a solicitor who has any knowledge of an incumbrance affecting the property, such knowledge is in law communicated to the principal, the latter may be wholly unconscious of the existence of the incumbrance.

It makes no difference that the solicitor employed happens to be himself the owner of the property.

Though it is the general rule that notice to an agent, in order to affect the principal, must be in the same transaction, yet if, from all the surrounding circumstances, from the one transaction being so recent or so closely connected with the other, that the party must be presumed to have remembered the previous one, in such cases the notice, although not in the same transaction, is nevertheless binding.

By a marriage settlement, certain properties, to which *A.*, the intended wife, was entitled, were settled upon the husband and wife, for their lives and the life of the survivor, and after the decease of the survivor to the use of the issue of the marriage, and in default of issue, to the use of such person as *A.* should by her will appoint. There was no issue of the marriage; and by an instrument in the form of a deed poll, reciting the antecedent deeds, *A.*, in pursuance of the power by the previous deed given to her, appointed, that in case she should die without issue, all the said properties should, after her decease, go to her husband absolutely. This instrument was stamped and attested as a deed, and a memorial of it was lodged in the registry office. *Held*, that the instrument was a deed both in form and substance, and therefore an invalid execution of the power. *Margoribanks v. Hovenden*, 1 Dru. 11.

Cases cited in the judgment: *Sheldon v. Cox*, Amb. 624; 2 Eden, 224; *Kennedy v. Green*, 6 Sim. 6; 3 Myl. & K. 609; *Hargreaves v. Rothwell*, 1 Keen, 154; see *Jones v. Smith*, 1 Hare, 43; *Phillips*, 244; *Fuller v. Bennett*, 2 Hare, 394; *Lenahan v. M'Cabe*, 2 Ir. Eq. R. 342; *Anon. Dyer*, 314, pl. 27.

## PRIVILEGED COMMUNICATION.

A solicitor may demur to interrogatories relating to the reserved bidding and other particulars of the nature and value of property sold by him for his client—and communications from the latter to him through an agent, are privileged. *Carpmael v. Powis*, 31 L. O. 509.

## TRUSTEE.

A solicitor, who, on being consulted by a very ignorant trustee, as to the payment of legacy duty, advises a sale of all the stock, (no sale having been authorised by the will,) and for that purpose, causes a power of attorney to be executed, the result of which is to give the solicitor possession of the fund, part of which he lends or professes to lend, on mortgage, retaining the balance, or the greater portion of it, for his costs and charges, ordered to show cause why he should not be struck of the roll, regard being had to the case made by his answer, and the suit having been instituted by legatees against the trustee, and such solicitor. *Goodman v. Gosnell*, 31 L. O. 510.

## VIII. LAW OF COSTS.

## ADMINISTRATION SUIT.

A residuary estate was divisible amongst several persons. An account was made up, and the adults received their shares. The infants filed a bill for an account against the executors and the other residuary legatees. The latter being satisfied, deprecated the proceedings. The accounts turned out to be substantially correct: *Held*, that the costs were payable out of the plaintiff's share alone. *MacKenzie v. Taylor*, 7 Bea. 467.

## AMENDING NOTICE OF MOTION.

If a motion stands over to amend the notice, and instead of amending, a new motion is made, the costs of the first motion will be given upon the hearing of the second. *Pinner v. Wright*, 32 L. O. 351.

## ANSWER.

See *Impertinence*.

## DISMISSAL.

Costs refused on a motion to dismiss for want of prosecution in a case where the plaintiff was dead; but where an order had been made in December last that he should file a replication. *Bull v. Roberts*, 32 L. O. 82.

## IMPERTINENCE.

Where an answer is found impertinent, the plaintiff is entitled to the costs, and the master has no discretion on the subject. *Lewis v. Smith*, 7 Bea. 452. See *Muscott v. Halbed*, 4 B. C. C. 222; *Tyrrrell v. Redifer*, 1 Mar. 152; *Desanges v. Gregory*, 6 Sim. 475; and *Ewerett v. Prythergh*, 12 Sim. 464.

## INFANT.

An infant plaintiff who repudiates a suit on coming of age is not entitled to costs, unless the suit has been improperly instituted. *Appleyard v. Oures*, 32 L. O. 202.

## MOTION.

1. *Death*.—An order to file replication within a certain time, or in fault to dismiss the bill, obtained, upon notice of motion, on behalf of several defendants, after the death of one of such defendants, discharged with costs, is irregular.

*Evans v. Gwillim*, 4 Hare, 685. See *Rowlatt v. Cattell*, 2 Hare, 186.

2. *Notice*.—Costs of a motion may be given, although the notice of motion does not ask that the order may be made with costs. *Powell v. Cockerell*, 4 Hare, 672.

#### SECURITY FOR COSTS.

The beneficial owner of an old judgment, in order to avoid liability to costs in a suit to be instituted to raise its amount, procured it to be assigned to a pauper, and filed a bill in his name. The proceedings were stayed until the plaintiff should give security for costs. *Burk v. Lidwell*, 1 J. & L. 703.

#### TAXATION.

1. *Payment out of court*.—The taxation of a bill was directed on terms of paying the amount, 50*l.*, into court; it was taxed at 25*l.* The Master of the Rolls upon motion, directed payment out of court of the fund deposited.

Terms of taxation after the expiration of one month from the delivery of the bill. *In re Bromley*, 7 Bea. 487. See *Heathcote v. Edwards*, Jacob, 504; *Oliver v. Burt*, 1 Bea. 585; *Garratt v. Niblock*, 5 Bea. 143.

2. *Death of clerk*.—Special direction given on an order for taxation, that if the solicitor should be unable to establish any of the charges by reason of the death of his clerk, or the absence of the books and papers delivered to the client, the taxing master should report specially thereon. *In re Watts*, 7 Bea. 491.

3. *After payment*.—Taxation ordered, after payment under protest, the payment being insisted on as a condition for parting with a deed necessary to complete a purchase.

A party named trustee without his sanction, and called on to disclaim, is authorised in taking the opinion of counsel as to his obligation to execute a disclaimer.

4. *Journey*.—Generally country solicitors are not allowed the costs of a journey to London to examine abstracts there, unless there be some speciality. *In re Tryon*, 7 Bea. 496.

#### TRUSTEE.

Trustees and their *cestui que trusts*, and next of kin in the same interest, severing in their defences, entitled only to one set of costs, although stated (at the bar, but not by the answers) to reside in parts of the country remote from each other. *Farr v. Sheriffe, Dykes v. Farr*, 4 Hare, 528.

Cases cited in the judgment: *Beads v. Sparkes*, 1 Moll. 8; *see Gaunt v. Taylor*, 2 Beav. 346; *Nicholson v. Falkiner*, 1 Moll. 560.

In closing the present Series of the Equity Digest, it will be convenient for the purpose of reference to state the pages of the previous sections. They are as follow:—

I. Principles of Equity, 291.

II. Construction of Wills, 319.

III. Construction of Statutes, 322.

IV. Pleadings, 345.

V. Evidence, 349.

VI. Practice, 367.

VII. Law of Attorneys and Solicitors, 393.

VIII. Law of Costs, 394.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

*Re Alvey*. July 30, 1846.

LUNATIC.—PART MAINTENANCE OF WIFE OUT OF HER SEPARATE INCOME.

*The court will not order a sale of stock bequeathed to the separate use of a married woman, who afterwards became insane, for the purpose of reimbursing her husband the medical and extra expenses occasioned by her lunacy, and which had been discharged by the husband out of his own income.*

A LUNATIC was entitled under her father's will to certain funds for her own use, subject to the life interest therein of her mother, since deceased.

The lunacy supervened during the mother's lifetime, but no commission had issued. Before the income became vested in the lunatic, her husband, who was in very narrow circumstances, (farming about 100 acres of land in Essex,) expended 415*l.* in medical advice, &c., and in removing her from place to place for the benefit of change of air. The executors of the father's will filed a bill for its administration, and upon the usual reference the Master reported, that the lunatic's interest amounted to about 90*l.* per annum—that 70*l.* a year would be a proper allowance for her—that 274*l.*, part of the said 415*l.* had been properly incurred by the husband in medical advice and attendance. The Vice-Chancellor (*Wigram*) thinking that he had no jurisdiction in the matter, so far as related to the lunatic, hesitated to confirm the Master's report and to decree the sale of sufficient part of the stock for the payment of the costs and for the reimbursement of the husband.

Mr. *Green* now applied to his Lordship on behalf of the husband, and prayed for the whole of the 415*l.*, or at least for the sum of 274*l.*, so proved to have been properly expended as aforesaid, and that stock should be sold out for the purpose of raising the amount at once, as it would take 13 years to replace the smaller sum (274*l.*) if the income, less the 70*l.* annual allowance, should be appropriated for that purpose. The expenses were reasonable, and such as a lunatic might contract. *Es parte Whitbread, re Hinde*, 2 Mer. 99; *Wentworth v. Williams*, 5 Beav. 325; *Wentworth v. Tubb*, 1 Y. & C. 171. Reference as to past maintenance had been ordered in *Brodie v. Barry*, 2 Ves. & Bea. 36.



The Lord Chancellor could not grant all that was asked. It was the husband's duty to maintain his wife, and it did not appear that any part of the 415*l.* remained due; on the contrary, it was stated to have been paid by him, although at great inconvenience. The court must look to the probability of the lunatic's recovery, but as the husband and wife would have been entitled to the whole of the income if the latter had not been so afflicted, an order might be made to pay the whole of it to the husband, and the costs of the suit and of this application, and also the legacy duty, might be repaid from the produce of a sufficient part of the stock, to be sold out for that purpose.

#### Rolls Court.

*Fortnum v. Shackel.* April 24, 1846.

#### PAYMENT OF MONEY INTO COURT — DIVIDENDS.

*The court will order the payment of dividends on stock directed to be transferred into court, to a tenant for life whose title is admitted, without requiring a petition to be presented for the purpose.*

THE bill in this case was filed for the administration of a testator's estate. The testator by his will gave one moiety of his property to his nephew for life, with remainder to his issue.

The property remaining unadministered consisted of about 10,600*l.* stock, of which it was admitted by the executors, that 8,000*l.* formed the moiety of the testator's property, to which the nephew was entitled for life; and a motion having been made by the plaintiff for the transfer of the stock into court, a question arose, whether the dividends of the stock could be ordered, on the present application, to be paid to the nephew for life, whose title was admitted, or whether a petition must be presented by the nephew after the funds had been transferred.

Mr. Turner and Mr. Cook for the plaintiffs.

Mr. Miller for the defendant, the nephew.

The Master of the Rolls said, that as the defendant, the nephew, was before the court, there was no reason why any further application should be necessary, and his Lordship made the order for the transfer and payment of the dividends.

#### Vice-Chancellor of England.

*Howard v. Gash.* July 1, 1846.

#### PLEADING.—PARTIES.

*Where one of two executors proves a will, power being reserved to the other to come in and prove, the probate on the death of the executor enures to the other, and it is not necessary therefore in a suit for the administration of the testator's estate to bring before the court any other personal representative than the surviving executor.*

THIS suit was instituted for the administration of the three estates of Thomas James

Howard, Jane Howard, and Wilkinson Moore, the testators and testatrix in the pleadings named. The testator, Thomas James Howard, by his will dated the 23rd of September, 1841, gave to his wife, Jane Howard, his father-in-law, Wilkinson Moore, and the defendant, Thomas Gash, all his leasehold messuages wherein he dwelt, together with all his stock in trade and effects, and also his real estate, upon trust to sell and convert the same into money, and after payment of his debts to stand possessed of the produce upon trust, as to one third for the benefit of his said wife absolutely, and as to the remaining two-thirds, for the benefit of the infant plaintiff. He also appointed his wife executrix of his will, who proved the same on the 11th of November, 1841. In February, 1842, the testatrix, Jane Howard, died, having by her will given all her property to the infant plaintiff, and appointed her father, Wilkinson Moore, and the defendant, Thomas Gash, her executors. This bill was proved by Wilkinson Moore alone, power being reserved to the defendant to come in and prove the same, and Moore, by virtue of the probate granted to him, possessed himself of the quarter part of the testatrix's effects. On the 15th of April, 1844, Wilkinson Moore died, having by his will, dated the 20th November, 1843, given all his property to the defendant upon certain trusts for the benefit of the plaintiff, with remainders over in the event of the plaintiff dying under 21, and having appointed the defendant sole executor of his will, by whom it has since been proved. The property of the testator, Thomas James Howard, was not sold or converted into money by the defendant or the other trustees, pursuant to the testator's directions, but had been sold by the defendant since the death of Moore, and the greater part of the produce had been paid into court. The defendant by his answer, after admitting that he had proved the will of Wilkinson Moore, said that he was advised he thereby became the legal personal representative of that testator, but that he was also advised, that not having proved the will of the testatrix, Jane Howard, or acted in or accepted the trusts of her will, he did not become nor was he the legal personal representative of that testatrix, or of the testator, Thomas James Howard.

Mr. James Parker and Mr. G. L. Russell, as a preliminary objection for want of parties, submitted, that as the defendant had never proved the will of the testatrix, Jane Howard, there was no representative of her estate, or of the estate of the testator, Thomas James Howard, before the court, and that the suit was therefore defective.

Mr. Anderdon and Mr. Miller, for the plaintiff, urged, that where one or two executors prove the will, the right to act is in the other until he renounces, and that if he acts, (as the defendant had in this case,) administration cannot be granted to any one else on the death of the one who proves.

The Vice-Chancellor concurred in the view taken by the plaintiff's counsel, and said, that as the defendant had not renounced his execu-

torship, he was still the representative of the testatrix, Jane Howard, and as the probate taken out by Moore enured to both, he was now the representative of the three estates. A decree was therefore made for the administration of the three estates, with the usual reference to the Master to take accounts.

### Queen's Bench.

*The Queen v. The Overseers of Oxted.* Trinity Term, 1846.

PRACTICE. — MANDAMUS. — COSTS UNDER 1 W. 4, c. 21, s. 6.

*As a general rule the costs of an application for a mandamus under the 1 W. 4, c. 21, s. 6, will follow the event, unless a strong ground of exemption can be shown.*

*Where the quarter sessions dismissed an appeal on an objection to the sufficiency of the notice of appeal, and an application was afterwards made for a mandamus to compel the justices to hear the appeal, and the overseers of the respondent parish appeared to show cause against the rule, the court granted the costs of such application, and of the mandamus against the party showing cause against it, it appearing to this court that the objection on which the sessions decided was frivolous.*

A WRIT of mandamus had been obtained commanding the justices of Surrey to enter continuances and hear an appeal against an order for the removal of a pauper from the parish of Oxted, in the county of Surrey, to the parish of St. Ann, Westminster, in the county of Middlesex. It appeared that when the appeal had been called on at the Surrey quarter sessions, held at Guilford, the appellants, being required to prove their notice of appeal, called the clerk to the guardians of the Union in which their parish is situate, who proved the due service of the following notice with the grounds of appeal.

"Take notice that we, being a majority of, and acting for and on behalf of, the churchwardens and overseers of the parish of St. Ann, Westminster, in the county of Middlesex, do intend, at the next general quarter sessions of the peace to be holden in and for the county of Surrey, to prosecute an appeal against a certain order, &c.; and the grounds of appeal are, &c. Signed J. F., Churchwarden of the said parish of St. Ann, Westminster. J. P., W. A., J. A., J. B., the overseers of the poor of the said parish of St. Ann, Westminster."

There were two churchwardens and four overseers in the appellant parish. It was objected by the respondents, that the notice of appeal was insufficient and bad on the face of it, inasmuch as it appeared that the parties giving such notice were only a majority acting for and on behalf of the churchwardens and overseers of the appellant parish, instead of the whole body. The sessions held the objection to be valid, and dismissed the appeal.

In Easter Term last a rule nisi was obtained calling on the churchwardens and overseers of Oxted to show cause why they should not pay to the appellants the costs of the application for a writ of mandamus, and of the return made thereto, and the costs of this application.

Mr. Baldwin showed cause. The 1 W. 4, c. 21, s. 6, enacts that, in all cases of application for any writ of mandamus whatsoever, the costs of such application, whether the writ shall be granted or refused, and also the costs of the writ, if the same shall be issued and obeyed, shall be in the discretion of the court." The sessions were of opinion, that the notice sent by the appellants was insufficient, and if they have come to a wrong decision, it is contrary to all principle that the parish officers in whose favour their decision was made should be saddled with the expense of its reversal. Costs are not usually given where a new trial is granted on improper reception of evidence or misdirection by a judge, and the decision of the sessions is a decision by a court of competent jurisdiction. [Lord Denman, C. J., referred to the case of *Regina v. The Justices of Middlesex*,<sup>a</sup> where, on execution of a writ of inquiry under a railway act, the sheriff stopped the cause on a preliminary objection, the court said, we must follow the general rule that where a judicial decision has been given, the party who comes forward only to defend a judgment in his favour, and which he is entitled to suppose a right one, shall not pay costs.]

Mr. Pashley, contra. This case comes within the general rule as to costs laid down by this court in *Regina v. The Mayor of Newbury*,<sup>b</sup> where Lord Denman, C. J., says, "It is so nearly a matter of course to grant costs under the statute to the party ultimately succeeding, that we cannot, without very strong grounds, depart from the general rule." In *Regina v. The Justices of the West Riding*,<sup>c</sup> the costs of a mandamus to erase an entry from the record of quarter sessions were refused to the party applying for the mandamus; but that was on special grounds, and in the judgment of the court, the general rule, as above stated, was admitted. The objection to the notice of appeal was frivolous and unfounded, the justices against whom the rule for the mandamus was moved did not appear to show cause against it, and the parish officers did so at the peril of incurring all the consequent expenses.

Lord Denman, C. J. The general rule is, that the costs of a mandamus are to follow the event of the mandamus; but there is a general rule in an opposite direction, namely, that where, through the error of the court, further proceedings become necessary, the practice is not to saddle the party prosecuting them with the costs. Now I, for my part, do not think that we ought to give up any part of our jurisdiction as to costs; and although it is right to adhere to a rule generally speaking, still it

<sup>a</sup> 5 Q. B. R. 365.

<sup>b</sup> 1 Q. B. R. 765.

<sup>c</sup> 5 Q. B. R. 1.

seems to me that we should not bind ourselves down in practice, as there may be cases where we cannot follow any strict rule. The objection to this notice was really most frivolous, but by some means or other the court of quarter sessions is persuaded that it is valid, and considerable expense is incurred in setting them right. I think this is a case, therefore, where we may fairly say we will grant costs.

*Patteson, J.* The general rule certainly is, as mentioned by Lord Denman, that the costs follow the event of a mandamus, and I think there ought to be good cause for departing from it. I do not say that such a case may not exist, but I think this is not that case. It is said that this is like a verdict set aside for misdirection, which is usually done without costs, and I was at first much struck with the argument; but it must be recollected that such is not always the case, because where the court has committed an error, and a writ of error is brought, the practice is to give costs to the plaintiff in error.

*Williams, J.* It seems to me that the resistance to the mandamus was an unnecessary act, because when the attention of the parties was called to the objection they might have seen that there was nothing in it, except you go the length of saying that both churchwardens and all the overseers must sign a notice of appeal. The court intimated an opinion that the objection was not a good one, and still the parish officers take upon themselves to show cause against the rule. For these reasons, therefore, I think this rule ought to be made absolute.

Rule absolute.

#### Common Pleas.

*Smith and others, executors of Walter Smith, v. Earl of Charleville.* Trinity Term, 1846.

SIGNING JUDGMENT ON A SCIRE FACIAS.—TITLE OF AFFIDAVIT.

*An affidavit in support of an application to sign judgment for want of appearance to a writ of scire facias, is properly entitled as the proceedings on the scire facias, and not as in the original action.*

*Channell, Sergeant,* applied for leave to sign judgment on a *scire facias*, for non-appearance to the writ, in the proper time after a return of *non est inventus*. The affidavit in support of the application was entitled as the proceeding on the *scire facias*, and not as in the original action by the testator. It stated, that on the 11th of May last, a copy of the writ of *scire facias* had been left at 8, George's Place, Hyde Park Gardens, in the county of Middlesex, being the defendant's known last place of abode. It further stated, that a copy had been left at the House of Lords, where letters were left for, and sent to the defendant, as also at the Carlton Club, where the porter said it would be forwarded to the defendant

and on the 14th of May last, a copy had been served on the attorney in the original action.

*By the Court.* The affidavit is sufficient to warrant the granting of the application.

Application granted.

*Revell v. Wetherell.* Trinity Term, 1846.

JUDGMENT ON NUL TIEL RECORD.—AMENDMENT OF ORIGINAL RECORD.

*Where, on a motion for a judgment on an issue of nul tiel record, there appeared an irregularity in entering the issue in the original record, the court allowed an amendment to be made, and granted the application.*

*Byles, Sergeant,* moved in this case for judgment on an issue of *nul tiel record*, and for the amendment of the original record. It was an action on a judgment, and the declaration stated that a judgment had been recovered for the sum of 103*l.* 8*s.* 4*d.*, on the 14th of May, 1845. The defendant pleaded that there was not any record of the alleged recovery. The date of the original record corresponded with that in the declaration, but the issue appeared to have been entered as of Easter Term, and not of Hilary Term, when in fact issue had been joined, contrary to the rule of court, H. T. 11 Geo. 1, which orders that issues are to be entered of record of the term in which they are joined.

*Tindal, C. J.* As the record has been brought before us we are at liberty to say that it may be altered. The application therefore should be granted.

Application granted.

*Hammond v. Colls.*—Trinity Term, 1846.

DEMURRER TO REPLICATION.—APPLICATION TO AMEND.

*Where a year has elapsed from the time of giving judgment for the defendant on a demurrer to the plaintiff's replication, the court will not allow an amendment of the replication, nor the insertion of an additional count in the declaration, the time within which the latter must be done being two terms after service of the declaration.*

IN this case, which was an action of trespass, the defendant had demurred to the plaintiff's replication to the eighth and tenth pleas. Upon argument of the demurrer, in Trinity Term, 1845, judgment had been given for the plaintiff as to the replication to the tenth plea, but for the defendant as to the replication to the eighth plea, the traverse in the latter being too large.

*Manning, Sergeant,* now applied to the court for a rule calling upon the defendant to show cause why the plaintiff should not be at liberty to amend the replication to the eighth plea upon payment of costs, or why he should not be at liberty to insert an additional count in the declaration. He assimilated the case to

those where amendments had been allowed after a writ of error sued out.

*Tindal*, C. J. After the lapse of two terms from the service of the declaration the court does not allow the insertion of other counts, and we are of opinion that after a year has passed since the subject matter was disposed of, we ought not to permit an amendment in the pleadings.

Rule refused.

### Court of Bankruptcy.

*In re West*. August 12, 1846.

#### ATTESTATION OF INSOLVENT'S PETITION.

JOHN WEST petitioned this court for protection, under the statute 7 & 8 Vict. c. 96. The attestation of the insolvent's petition was as follows:—"Signed by the said petitioner on the 29th day of July, 1846, in the presence of Henty B. Roberts of ———, attorney or agent in the matter of the said petitioner."

On the part of an opposing creditor it was objected, that the attestation was defective and not in the form specified by the statute, inasmuch as the intention of the legislature clearly was, that the blank after the word "of" should be filled up by inserting the residence or place of business of the petitioner's attorney, instead of which it was here left a blank. On the part of the petitioner it was contended, that there had been a literal compliance with the form prescribed by the statute, inasmuch as the form given by schedule A. No. 1, left a blank after the word "of," precisely as the petitioner had done. The learned commissioner's attention was also directed to the 6th section of the Small Debts Act, 8 & 9 Vict. c. 127, which enacted, "That in making application to any commissioner or court as aforesaid, or taking any proceedings under this act, or under the acts (5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96), it shall not be requisite for any party, whether creditor or debtor, to employ either counsel, or attorney or solicitor."

Mr. Commissioner Goulburn was clearly of opinion, that the attestation to this petition was not in the form specified in schedule A, annexed to the act 7 & 8 Vict. c. 96. The second sect. of that statute enacted, that if the petition should not be in the form therein prescribed, such petition should be dismissed. Here the petitioner left the residence of the attorney in blank, when it should be filled up. It was said this was a literal compliance with the form prescribed by the act. The act gave a form applicable to every case, but blanks were left to be correctly filled up, with the date of signing the petition, the name of the attorney and his residence. If the argument now urged was to prevail, it would be unnecessary that the blank for the date or the name of the attorney should be filled up any more than his residence. This indeed would be "keeping the word to the ear and breaking it to the sense." But there it was said, that under the latter statute,

8 & 9 Vict. c. 127, the attestation of an attorney or solicitor was altogether dispensed with. Be it so: an attestation by some person was not dispensed with, and if any person brought in from the street might attest the petition, there was the mere reason for requiring that the person attesting should give his address. The residence or place of business of a certificated attorney could always be ascertained, but it was not so easy to find the address of persons who styled themselves "agents." There was good reason for requiring the address to be given in every case, and as it was omitted here, the petition must be dismissed.

### NOTES OF THE WEEK.

#### POSTPONEMENT OF LORD BROUGHAM'S BILLS.

On the 14th instant Lord Brougham stated in the House of Lords, that he had frequently been asked what had become of the six bills which he had carried through their Lordships' house for the amendment of the law. He would now explain that the late changes in the government had rendered it necessary to postpone them until next session. He could not expect the law officers of the crown who had just entered office to consider these measures in time to allow of their being passed in the present session.

#### MILLBANK PRISON.

On the discussion regarding the appointment of Commissioners to inquire into the state of this prison, complaint was made that Mr. Duncombe, who had brought forward the case, was not added to the commission. The Home Secretary being a member of the Bar, we shall venture to extract the following notice of the right honourable and learned member's phrenological development, which was amusingly stated by the Coroner for Middlesex:—

"Sir G. Grey said, it was quite true that he had appointed such a commission as that referred to; the gentlemen comprising it were the Earl of Chichester, Lord Seymour, and Mr. B. Escott. He had never thought of placing Mr. T. Duncombe on the commission. That hon. member stood in the position of the accuser in this case (he used that word in no invidious sense)—and certainly he could not, with propriety, be put upon the jury.

"Mr. Wakley said, that the public would never be satisfied unless Mr. Duncombe were put upon the commission. He did not understand that these commissioners were to act as judges: they were only to inquire." They would have no power of dismissing or punishing offenders. He thought, therefore, that the Home Secretary had made a mistake in the matter; he was sorry for it; he had looked at his head—he usually looked at the heads of all those who were appointed to office—and he

was induced to repose in the right hon. baronet very considerable confidence.

"Sir. G. Grey—(taking off his hat)—I will sit uncovered in future.

"Mr. Wakley was sure the right hon. baronet had plenty of 'benevolence,' and a strong 'sense of justice,' and he was disposed, from 'the phrenological survey' he had taken of him, to repose entire confidence in him personally. But he trusted the right hon. baronet would reconsider the course he had taken in this matter. He denied that his hon. colleague stood in the light of an accuser. He had performed his duty as a member of that house by presenting a petition from a party who had a complaint to make, and he had done no more; he could not, therefore, be considered 'an accuser.'

"Sir G. Grey said, he had felt it desirable that the number of the commissioners should be limited. They stood in a different position from a committee of the house, for if not judges of facts, they were at least to be judges of opinions. He was sure that, upon reflection, the hon. member's own 'sense of justice' would convince him that the right course had in this instance been pursued."

#### THE LATE SIR CHARLES WETHERELL.

We have to express the general regret of the profession at the death of Sir Charles Wetherell, Q. C., which took place on the 17th instant, in the 76th year of his age. He was a Bencher of the Inner Temple, by which society he had been called to the bar on the 4th July, 1794. He had consequently been upwards of 52 years at the bar, and was senior Queen's counsel. He was Recorder of Bristol, Temporal Chancellor of the County Palatine of Durham, and (as we lately noticed) Deputy Steward of the University of Oxford. He was also a Master of Arts and Doctor of Civil Law. In Dec. 1823, he was Solicitor-General, and in September, 1826, Attorney-General. The latter office he resigned in April, 1827.

We shall take an early opportunity of giving a memoir of this distinguished member of the bar.

#### PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

Royal Assents. 13th August, 1846.

Art Unions.

18th August.

Religious Opinions Relief.

Books and Engravings.

Loan Societies.

Stock in Trade.

Wolverhampton Stipendiary Justice.

Common Pleas Court.

Deodands Abolition.

Highway Rates.

Copyhold Commission.  
Turnpike Acts.

#### House of Lords.

##### BILLS PASSED.

Poor Removal.

Tithe Act Amendment.

##### BILLS IN PROGRESS.

Juvenile Offenders. In Committee.

General Registration of Deeds. — For 2nd reading.

Punishment for deterring Prosecutors' Witnesses, &c. In Committee.

Game Laws. To be reported.

Small Debt Courts:

St. Austell. In Committee.

Birkenhead. In Committee.

Death by Accidents Compensation.

Commons Amendment to be considered.

Commons Inclosures.

Amendments to be considered.

Commons Inclosure, No. 3. For 2nd reading.

Drainage of Land. For 2nd reading.

#### House of Commons.

##### BILLS PASSED.

Tithes Commutation.

Contagious Diseases.

##### BILLS IN PROGRESS.

Small Debts. Re-committed.

Northampton Small Debts Court.

Private Bills. In Committee.

Registration of Medical Practitioners. In Committee.

Insolvent Debtors Amendment Act. For 2nd reading.

##### FEES IN COURTS OF JUSTICE.

Mr. Romilly will, next session, call the attention of the House to the Fees paid by the Suitors in the various courts, and the application thereof; and generally to the mode of defraying the expenses of the Administration of Justice throughout the country.

#### THE EDITOR'S LETTER BOX.

We apprehend that we cannot accommodate a Subscriber in Clifford's Inn, by undertaking the responsibility of answering his queries; but will consider them.

The letter of our old correspondent "Civis," shall be attended to.

The practical inquiry of F. F. shall be noticed next week.

The various new acts shall be given as speedily as possible.

# The Legal Observer.

SATURDAY, AUGUST 29, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## THE SMALL DEBTS OR LOCAL COURTS' BILL.

IN our last number we noticed the various amendments which this bill had undergone in its progress through the Committee of the House. Afterwards, on the bringing up of the report, several further additions and alterations were introduced, which we shall now proceed to point out.

Two of the most material alterations which have been affected, are in the Jurisdiction Clauses.

1. Besides excluding actions of Ejectment or Questions of Title to Hereditaments, Tolls, Fairs, Markets or Franchises; or disputed Devises, Bequests or Limitations under any will or settlement,—the Bill now also excludes Actions for Malicious Prosecution, or for Libel or Slander, or for Criminal Conversation, or for Seduction, or Breach of Promise of Marriage.

2. In prescribing the consequences of bringing an action in the superior courts, for which a plaint might be entered under the act,—the loss of costs is now limited to a verdict for less than 20*l.*, if the action be founded on Contract, or less than 5*l.* if it be founded on Tort, unless the judge who shall try the cause shall certify that the action was fit to be tried in the superior court.

In the clause which we noticed last week, marked (O.), authorizing the judges of the new court to act as Commissioners or Country Masters in Chancery, an amendment has been made, by which not only the judges but the “other officers appointed under the act” are to be included. This alteration, therefore, will comprise the

clerks of the court who are to be attorneys.

On re-perusing the clause relating to persons “who may appear” for the parties in these courts, we find there is a distinction drawn between appearing to a *proceeding* and *arguing a question as counsel*. In the former case the “leave of the judge” does not seem requisite for a barrister or attorney, but in the latter, such leave must be obtained. The reason of this difference has not yet been stated. “Appearing to a proceeding” may mean prior to the trial. This would be the business of an attorney, but a barrister “instructed by such attorney,” is included in the enactment, and therefore, something more than entering an appearance or other interlocutory step must be contemplated; but then it is provided, that “no barrister, attorney, or other person, except by leave of the judge, shall be entitled to be heard to argue any question as counsel.” What this diversity of enactment means, it is not easy to conjecture. The late introduction of the measure, and the haste with which it is now urged forward, prevent the possibility of going into these and other details, and rendering the clauses practically applicable to the purpose intended.

Amongst the clauses which excited much discussion in the committee of the House, were those relating to the Qualification of the Judges. It is of course admitted on all hands, that for the higher class of judicial offices, the leading advocates and eminent lawyers at the bar are the fit persons; but the duties of Under-sheriffs, Coroners, and other officers, partly ministerial and partly judicial, have long been ably and satisfactorily performed by attorneys. The question is—whether

there will be any duties to be performed by the intended local judges which an attorney cannot adequately execute?

By the Bill itself, the attorneys holding office as judges or clerks under the existing Local Courts, are rendered eligible for the enlarged courts. The majority of those offices are at present held by attorneys; but the bill provides, that the judges in case of vacancy hereafter shall be barristers.

The claim of the attorneys to be admissible for the office of judge, was well maintained in the House, though not so numerous as might have been expected. Lord Granville Somerset, Mr. Wakley, Colonel Sibthorpe, and Mr. Escott, spoke in favour of their eligibility.

The Home Secretary readily admitted, that there were some most learned men in that branch of the profession, who possessed very high qualifications for many important offices. He assured the House that there was not the least intention to throw any slight upon the attorneys.

The Attorney-General reminded the House of the "lucrative" offices already appropriated exclusively to attorneys,—that of clerk to the judge [or court:] and observed, that one reason for preferring barristers to attorneys as judges was, that "their line of practice was better fitted for qualifying them as judges. The attorney (he said) directed his attention to details, and to the getting up of cases, while the barrister applied to these cases the general principles of law."

Now it is curious in reference to this point, that in the discussion which occupied much of the attention of the House on the expediency of permitting barristers holding the office of judge, to practise in the Courts at Westminster, it was urged by Mr. Romilly, that "concurrent practice as a barrister unfitted a man's mind for the judicial capacity." Certainly the business of counsel, and particularly of such juniors as would be likely to accept these appointments, consists mainly of "attention to details and getting up of cases,"—and this to an extent quite as much as the superior class of attorneys, who alone could expect to be placed in these judicial offices. Besides, these details and this preparation of cases necessarily implies an acquaintance with the principles by which they are to be decided. In vain would the attorney apply himself to "getting up" his client's case, if he did not comprehend the principles by which it was to be adjudicated, and

the rules by which the decision would be governed.

In the bill of the present government, when in office some years ago, and in that of the late government in a former session, and in the act of the last session for enlarging the Local Courts, it was provided, that attorneys as well as barristers should be eligible for the office of judge. And when it is recollected not only that they have largely suffered by the changes which have been effected of late years, but that they have spared no pains to improve the means of legal education, and impart a sounder and more complete knowledge of the law by founding a Library and Lectures, and by the Examination which has been instituted at their request,—we think they are fairly entitled to the consideration which has been claimed in their behalf.

It is much to be regretted for the sake of the profession in general,—since all its branches are interested in its collective prosperity,—that the members of the bar who hold seats in parliament, do not seem sufficiently to regard the interests of their immediate clients, the larger branch of the profession. The feeling surely should be, that, although holding various ranks and stations, all are members of the same honourable and learned body; and the more so, when it is recollected how frequent are the instances in which members of the same family, each occupy an eminent position in the several departments of the law: one on the bench; another at the bar; and a third practising as a solicitor. The names of Shadwell, Tindal, Coleridge, and Wilde, are striking examples of the unity of feeling and interest which should naturally prevail throughout the profession.

An erroneous notion seems to be entertained, that the business of an attorney is incompatible with any of the higher exercises of the intellectual faculties, and yet there are, and have been, many attorneys who have distinguished themselves in various departments of literature, and others who have adorned the bench of our highest courts in Westminster Hall. Amongst the former may be mentioned the names of Sharon Turner, William Bray, Bryan Proctor, and James Smith; and in the latter class are enrolled the eminent names of Lords Hardwicke, Kenyon, Gifford, and "though last not least," Sir Thomas Wilde. The Attorney-General, indeed, will probably admit, that his immediate predecessor, now worthily at the head of the Court of Common Pleas, was not less fitted for

his brilliant career, because he once practised extensively as an attorney, and probably his extraordinary insight into the details of causes, and the masterly tact with which he conducted all parts of them, were in no small degree ascribable to the skill and knowledge which he acquired during his early exertions in the other branch of the profession. We think, therefore, that whatever reasons of policy there may be which have induced the government to reject the claims of the attorneys, that rejection cannot rest upon their unsuitness to preside in the courts constituted under this bill. Indeed, of the actions to be tried under it, we believe that 99 out of every hundred will be brought for goods sold, work and labour, or money paid or lent. And it is manifest that in matters of account, and most of the details of business, an attorney is more likely than a barrister to possess the information and experience, requisite to determine satisfactorily the questions that will come before the court, either with or without a jury.

## POINTS IN COMMON LAW.

### COSTS OF REMANET UNDER RULE FOR NEW TRIAL.

THE books of practice lay it down as a rule of taxation that where a new trial is granted upon payment of costs, in a town cause, the costs arising out of making the cause a remanet, are to be paid by the party on whose application the new trial is granted. The authority cited in support of this proposition in all the treatises is a case of *Robinson v. Day*, in the Queen's Bench,<sup>a</sup> in which the point is reported to have been so decided, after a conference with the judges of the other courts. Considering that a cause is usually made a remanet, either from one assizes to another, or from one sitting to the next, not by reason of the default of either of the parties, but because the court is unable to try all the causes entered for trial at the particular sitting or assize, it seems unreasonable that the cost of the postponement should be paid by the party to whom a new trial is granted on the ground that the jury had committed an error, and who may or may not be the party ultimately found to be in the wrong, and therefore properly

compellable to pay the general costs of the cause. It is satisfactory to observe that the Court of Common Pleas, in a case decided in Easter Term,<sup>b</sup> adopted what appears to be the just and rational view of the question, and with more candour than was displayed by the counsel who in argument suggested that the report of *Robinson v. Day* was erroneous, the late learned Chief Justice Tindal, after mentioning the case to some of the judges of the other courts, declared that they agreed with the Court of Common Pleas in thinking that the case of *Robinson v. Day* must have been decided under a misapprehension and could not be supported.

The facts which led to this decision in *Bentley v. Carver* were shortly as follow:—The cause was entered for trial at the sittings after Trinity Term, and made a remanet in consequence of the number of causes for trial at that sitting. The trial took place at the sitting after Michaelmas Term, and a rule was subsequently made absolute for a new trial upon payment of costs by the defendant. In taxing the costs, the Master, upon the authority of *Robinson v. Day*, allowed the plaintiff the costs of the cause being made a remanet, which the defendant paid under protest, and then obtained a rule to review the taxation.

The judges of the Court of Common Pleas were decidedly in favour of the application upon the argument, but felt themselves, as the Masters had uniformly done, fettered by the decision in *Robinson v. Day*. After consulting the other judges, however, it was felt that that case could not be supported, and it may now be considered as overruled by the case of *Bentley v. Carver*, in which the rule to review the taxation was made absolute.

## NEW STATUTES, EFFECTING ALTERATIONS IN THE LAW

### LEGALIZING ART UNIONS.

9 & 10 VICT. C. 43.

An Act for legalizing Art Unions.

[13th August, 1846.]

1. *Voluntary associations constituted for the distribution of works of art by lot deemed legal, provided a royal charter shall have been first obtained, &c.*—Whereas certain voluntary associations have been and may hereafter be formed in

<sup>a</sup> 3 B. & Ad. 814; 2 Nov. & M. 670.

<sup>b</sup> *Bentley v. Carver*, 15 Law J. 173, C. P.



various parts of the United Kingdom, under the name of Art Unions, for the purchase of paintings, drawings, or other works of art, to be afterwards allotted and distributed, by chance or otherwise, among the several members, subscribers, or contributors forming part of such associations, or for raising sums of money by subscription or contribution, to be allotted and distributed, by chance or otherwise, as prizes, amongst the members, subscribers, or contributors forming part of such associations, on the condition nevertheless that such sums of money so allotted and distributed be expended solely and entirely in the purchase of paintings, drawings, or other works of art : And whereas such allotment and distribution of paintings, drawings, or other works of art, or of sums of money for their purchase, and the proceedings taken to carry the same into effect, may be deemed and taken to come within the provisions of the several acts of parliament passed for the prevention of lotteries, littlegoes, and unlawful games, whereby the members, subscribers, or contributors of such associations as aforesaid, or persons acting under their authority or on their behalf, may be liable or subjected to certain pains and penalties imposed by law on persons concerned in lotteries, littlegoes, and unlawful games : And whereas it is expedient that all members of and subscribers and contributors to such voluntary associations as aforesaid; and all persons acting under their authority or on their behalf, so long only as their proceedings are carried on in good faith for the encouragement of the fine arts, shall be discharged and protected from any pains and penalties to which they may have rendered themselves liable, by reason of any such their proceedings as aforesaid : Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That all such voluntary associations as aforesaid, now constituted, or which may hereafter be constituted according to the provisions herein-after contained, shall be deemed to be lawful associations ; and the members of and subscribers and contributors to all such lawful associations, and all persons acting under their authority or on their behalf for the purposes aforesaid, shall be freed and discharged from all pains and penalties, suits, prosecutions, and liabilities, to which by law they would be liable but for the passing of this act, as being concerned in illegal lotteries, littlegoes, or unlawful games, by reason of anything done or which may be done by them or any of them in furtherance of the allotment or distribution, by scheme or otherwise, of paintings, drawings, or other works of art, or of the allotment or distribution of sums of money as prizes to be expended for their purchase : Provided always, that a royal charter or charters shall have been first obtained for the incorporation of any such association, or provided that the deed of partnership, or other instrument or instruments constituting

such association, and the rules and regulations relating to the proceedings of such association for such purposes as aforesaid, shall have first been submitted to the consideration and be approved of by a committee of her Majesty's most honourable privy council, and a copy thereof deposited with such committee; and that it shall be expressed in every such charter, deed, or instrument, that it shall be lawful for any committee of her Majesty's privy council to whom the consideration of Art Unions shall be referred by her Majesty, whenever it shall appear to them that any such association is perverted from the purposes of this act, to certify the fact to her Majesty, and thereupon it shall be lawful for her Majesty to revoke or annul the charter, deed, or instrument under which the association so offending shall have been constituted ; and nothing in this act contained shall be deemed to apply to any association whose charter, deed of partnership, or other instrument constituting the same shall have been so revoked or annulled.

2. *Indemnity granted by 8 & 9 Vict. c. 57, till 1st August, 1846, further extended to 1st Nov., 1846.*—And whereas an act was passed in the seventh and eighth years of her present Majesty's reign, intituled "An Act to indemnify Persons connected with Art Unions, and others, against certain Penalties," which act was continued by another act passed in the eighth and ninth years of her present Majesty's reign, which acts only apply to acts done before the first day of August last passed : And whereas it is expedient that the said indemnity granted as aforesaid should be further continued ; be it therefore enacted, That the indemnity granted as aforesaid shall be extended to the first day of November in the present year, to the same effect as if the said last-recited act had in place of the words "the first day of August, one thousand eight hundred and forty-six," contained the words "the first day of November, one thousand eight hundred and forty-six."

3. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

## NOTICES OF NEW BOOKS.

*A Treatise on the Law relating to Patent Privileges for the sole use of Inventions ; and the Practice of obtaining Letters Patent for Inventions ; with an Appendix of Statutes, Rules, Forms, &c., &c.* By W. M. HINDMARCH, ESQ., Barrister at Law. London : Stevens & Norton. 1846. Pp. 807.

MR. HINDMARCH observes in his preface, that the improved state of the law relating to patent privileges, and the great and increasing importance of the subject

to the profession and the public, seem to demand a treatise exhibiting the law and practice in all its details; and with the view of supplying the acknowledged want of such a treatise, he has published this work.

The following is an outline of its contents:—

1. Introduction.
2. Of the grantor of a patent, and the power of the crown to grant the sole use of inventions.
3. Of the grantee of a patent privilege, or the person to whom the sole use of an invention may be granted.
4. Of the grant of a privilege in an invention by letters patent, and the construction of it.
5. Of the nature and qualities of an art or invention, which may be made the subject of a patent privilege.
6. Of the duration of the privilege granted by a patent for an invention, and the prolongation of it.
7. Of the specification of an invention which is made the subject of patent privilege.
  1. Of the confirmation of patents, and the alteration and amendment of patents, specifications, and enrolments.
9. Of the nature of the right or property of an inventor in his invention, and the disposition of it.
10. Of the remedies for patentees and for the public respectively.
11. Of the evidence to be given in actions respecting letters patent.

The Appendix contains—

1. Statutes, rules, and tables of fees and stamps.
2. Forms and entries.

The arrangement of the materials, always of importance in a scientific and practical book, has been judiciously managed; and we think Mr. Hindmarch has ably treated of the several parts of his subject.

In regard to the proceedings in *scire facias* and in the privy council, and in the practice of obtaining patents, entering disclaimers, &c., Mr. Hindmarch expresses his acknowledgments to the officers by whom the various proceedings are conducted or prepared, for their assistance in his labours, and it certainly must increase the value of the work that he has had the advantage of the corrections made by those gentlemen, to whom he submitted so much of the treatise as relates to their respective offices or departments, and he informs us that he has not stated anything on the subject of practice which has not been approved of by those authorities.

The forms in the appendix have been prepared with care, and, with very few

exceptions, we understand, have been actually used in practice.

Such is the nature and scope of this work, and as an example of the author's method, we shall extract his introductory chapter, which will be found particularly instructive to the student, and afford a useful summary to others:—

“The right of property in moveable chattels was recognised in the earliest periods, and is founded on the law of nature.” But it was very different with respect to the sole right to use an invention, which had its origin in an advanced state of society, and not until after improvements in the arts had made considerable progress.

“It has often been asserted, that according to the principles of universal equity, an inventor has an exclusive property in his invention. But it is clear, that independent of positive law, he has no such exclusive property, any longer than he keeps it secret; for no one who first makes any discovery can thereby acquire the right to prevent others from *making* and using the same discovery. He may, if he pleases, conceal his discovery from the world, but the moment he publishes it, he abandons his *exclusive* property in it, and others acquire a right to use the invention in any manner they please. The exclusive right to use an invention after it is published, can only have existence therefore by virtue of some positive law, which is made with the actual or implied consent of the whole community.

“Every member of the community receives many benefits from the society in which he lives, and he is therefore bound, by every means in his power, to advance its interests. And it seems to be but reasonable that he should be expected to promote the public weal by putting the community in possession of any discovery he makes which may be for the public good. But invention is generally the result of much study and labour, accompanied with a considerable expenditure of time and money, and few persons have the requisite ability and inclination, without the hope of reward, to search for improvements in the arts for the benefit of the public.

“The whole community is benefited by the promotion of the useful arts, and therefore, it is for the public good to hold out the promise of rewards to the inventors of new and useful arts and manufactures, who may first put the public in possession of them.

“In some cases, where meritorious inventors could not be otherwise adequately rewarded, sums of money have been granted to them out of the public purse;” but such a mode of re-

\* See Wollaston's Religion of Nature, s. vi.; Locke on Government, b. 2, c. 5; 2 Bl. Com. cc. 1, 24, 25, 26, and the authorities there referred to.

b See a list of cases in Parl. Rep. on Patents, 1829, App. p. 181.

compense, it is clear, could not be generally adopted.

"The mode of rewarding inventors, which has been adopted in this country, seems to be the best that could be devised :—it is by granting the inventor a monopoly in his invention for a limited time. It is true that by such a grant every other person is restrained during the continuance of the monopoly from using the patent invention, even if he makes a similar discovery himself. But at the time the grant is made, it is by no means certain that the invention will be given to the public, or even made by any other person, and by the temporary suspension of their right, the people acquire the certainty of being able to use the invention at the expiration of the monopoly. The reward which an inventor thus obtains, will, in general, be in proportion to the benefit which he confers upon the public, for the greater the utility of the invention, the more profitable will it be to the grantee of the monopoly.

Speaking of such a grant, Sir Edward Coke says, 'The reason wherefore such a privilege is good in law is because the inventor bringeth to and for the commonwealth a new manufacture by his invention, costs, and charges, and therefore it is reason that he should have a privilege for his reward (and the encouragement of others in the like) for a convenient time.'

Utility to the public is, in fact, the consideration for every grant of the sole use of an invention, and letters patent, containing such grants, always state the public good to be the motive of the crown in making the grants. It is not everything invented, therefore, to the sole use of which the inventor can become entitled, for the thing itself (although perfectly new) may be of no value whatsoever to the public. And an exclusive right vested in any one to use a thing, which at the time it is given or offered to the public, is of itself of no value, might prevent others from bringing forward useful and profitable inventions, by reason of such otherwise useless thing forming part of their inventions. If an invention is useful to the inventor, and useless to the public, the inventor does not suffer any injury by having no legal right to the exclusive use of it; for no one would infringe the right if he had it, and the legal right could not be any source of profit to him; and if he should fear that he himself would be deprived of the right to use his invention by reason of its being included in a grant to some other person, he might most effectually prevent that by publishing it to the world. Still less will the inventor be injured for want of such an exclusive right if the invention is of no utility either to himself or the public, and he cannot have any right by means of his useless invention to anticipate and appropriate to himself any part of the profit to arise from the subsequent invention of any other person who may be able by his ingenuity to confer an actual benefit upon the public.

"The total absence of utility to the public in any invention will at all times, therefore, vitiate a grant of the sole use of it; but it will not be void on that ground, if the invention was of any utility to the public, although such utility may be very small.

But an invention may happen to be of some use to the public, and yet it may be so trifling or frivolous that the inconvenience to the public, arising from the grant of the sole use of it, would not be adequately compensated by the benefit which the public would receive from it. The law has deemed it right, therefore, that mere discovery of any new manufacture shall not vest the sole right to use it in the inventor; but that in order to become entitled to such a sole privilege, he must obtain a grant of it from the crown, in whom the law has vested the power (which it exercises through its ministers) of judging not only whether the invention is likely to be of so much utility to the public as to render the making of the grant a matter of public expediency, but also what duration of privilege (not exceeding fourteen years) the invention merits.

"Accordingly inventors are never entitled as of right to letters patent, granting them the sole use of their inventions, but they must obtain them from the crown by petition, and as a matter of grace and favour, and letters patent always express that the grant is so made.

"It is impossible to ascertain with certainty when such grants of the sole use of inventions were first made in this country, but there is reason to believe that this prerogative of the crown is very ancient.

"Thus in a case decided in the reign of Edward the Third, it is said that arts and sciences which are for the public good are greatly favoured in law, and the king, as chief guardian of the common weal, has power and authority by his prerogative to grant many privileges for the sake of the public good, although *prima facie* they appear to be clearly against common right.

"And it is stated at the end of the report of the case of *Darcy v. Allen*, in Sir Francis Moore's Reports, that in the time of Edward III., some alchemists persuaded the king that a philosopher's stone might be made, that the king granted a commission to two fryers and two aldermen to enquire if it was feasible, who certified that it was, and that the king granted to the two aldermen a patent of privilege, that they and their assigns should have the sole making of the philosopher's stone.

"There is reason to believe that the practice of making grants of the sole use of inventions originated in England, and that the English system of rewarding inventors has since been copied more or less closely by almost every European power.

"It is quite certain that in England the crown derives its power to grant such letters

patent from the common law itself, but restrained by the Statute of Monopolies, which was little more than a declaration of the common law on the subject.

"Although it seems that the law has at all times permitted the grant of such limited monopolies as the exclusive right to use new inventions, yet almost all the other grants of monopolies by the crown were contrary to the common law, and the legislature in former times frequently interfered to repress them."

"Notwithstanding the illegality of all monopolies (except those for the sole use of new inventions,) they were very frequently granted in former times, but the continual encroachments of the prerogative upon the common law in this way, particularly during the reigns of Elizabeth and James I., led at last to the passing of the celebrated Statute of Monopolies in the 21st year of the reign of the latter monarch; by which the crown was effectually restrained from making such extravagant and illegal grants.

"It is by that statute declared, that all monopolies whatsoever are contrary to law, and void; with a saving however of letters patent and grants of the sole privilege of working or making of new manufactures to the first inventors thereof.

"The 5 & 6 W. 4, c. 83, the 2 & 3 Vict. c. 67, and 7 & 8 Vict. c. 69, are the only other public general acts relating to patents which have been passed since the Statute of Monopolies. These statutes provide a remedy for many of the deficiencies of the old law.

"For many years after the passing of the Statute of Monopolies the arts and manufactures continued in a low state in this country, few of the inventions for which letters patent were obtained were of any value, and the demand for novelties being very limited, no one was tempted to infringe the rights of patentees. Our law reports, from the time of the passing of that statute, therefore, until the reign of George III., are almost entirely silent respecting such patent privileges; and indeed the case of *Edgeberry v. Stephens*, reported in the second volume of Salkeld's Reports, is almost the only case to be found during that period.

"The first case of importance respecting a patent was an action of *scire facias* brought against Mr. Arkwright, to repeal his patent for an invention of certain instruments or machines for preparing silk, cotton, flax, and wool for spinning, which was tried in June, 1785."

"About ten years afterwards the important cases of *Boulton and Watt v. Bull*,<sup>1</sup> and *Horn-*

*blower v. Boulton and Watt*,<sup>2</sup> were tried, in which this branch of our law was much discussed, and many of its difficulties and obscurities cleared away.

"Since that period the number of causes respecting letters patent has gone on steadily increasing, in consequence of which, and the magnitude of the interests concerned in it, the patent law of this country has become of the greatest importance to the community, more particularly those engaged in trade or manufactures.

"There is now, perhaps, hardly any part of the law relating to patents which has not been made the subject of judicial investigation and determination; and this branch of our law may therefore now be said to have at last assumed the form of a regular system, and the relative rights of the public and of patentees, as well as the prerogative of the crown, to have been determined with at least a very considerable degree of certainty.

"There is yet, however, much wanting to render the law anything like perfect; but the greater part of the deficiencies can only be supplied by the legislature. Unfortunately there is little chance of the required remedies being applied at present, or indeed at all, whilst party strife shall continue to occupy so much of the time and attention of parliament."

## REMARKABLE FOREIGN TRIALS.

### CASE OF LECOMTE FOR TREASON.

We suspended until the Vacation, the continuation of our series of Remarkable Foreign Trials, and now select that of Lecomte. The case was tried at Paris in the Court of Peers on the 4th and 5th June last.

In addition to the peculiar circumstances of the case, the French mode of proceeding will naturally attract the reader's attention.

Thursday, June 4.

The semicircle usually occupied by the president and secretaries had been converted into a dock and a gallery for the witnesses, the president's chair had been removed to the right of the semicircle, and a space reserved on the left, opposite the president, for M. Hebert, the Attorney-General, and his substitute, M. Bresson.

At 12 o'clock, the Chancellor Baron Pasquier and the members of the court entered the hall, and shortly afterwards Lecomte was brought in by six gendarmes and placed between them in the dock. The accused was dressed in a blue surtout. He is a middle-aged man, rather stout, and his countenance denoted the greatest resolution.

<sup>1</sup> See Mag. ch. c. 20; 9 Edw. III, at. 1, c. 1; Stat. of Cloths, 25 Edw. III. c. 2; *Statutum de Stapulis*, 27 Edw. III. st. 2; 28 Edw. III. c. 12, s. 3; 31 Edw. III., c. 10; 2 Rich. II. at. 1, c. 1; 7 Hen. VII. c. 9, and 12 Hen. VII. c. 6.

<sup>2</sup> P. 447.

<sup>3</sup> See a report of the case in Davies's Patent Cases, p. 61.

<sup>4</sup> 2 H. Bl. 403.

<sup>5</sup> 9 T. R. 95.

When the court was seated, M. Cauchy, the secretary, called over the names of the peers, about 200 of whom were present.

The *President* afterwards directed Lecomte to stand up, and asked his name, age, profession, &c.

The prisoner replied—"My name is Lecomte (Peter). I was born at Beaumont, in the department of the Côte d'Or. I am 48 years of age. I formerly occupied the office of keeper-general of the forces of Fontainebleau. I last resided Rue de Colysée, No. 3. I am unmarried.

M. Cauchy then read the bill of indictment, which the prisoner appeared to listen to with considerable attention.

M. Cauchy afterwards called out the names of the 41 witnesses, who retired from the hall, with the exception of Count de Montalivet, who, suffering from gout, was allowed to remain, with the consent of Lecomte.

The *President* then proceeded to interrogate the accused.

Lecomte admitted that he had fired two shots upon the king. He had, he said, demanded the grant of the pension he was entitled to, after suffering many injustices, and, instead of acquiescing in his demand, M. de Montalivet gave him an annual relief, which was only to be paid him during the king's reign. He had vainly expostulated with M. de Montalivet; he wrote twice to the king and once to M. Fain, his secretary. The latter informed him that his demand had been referred to the Intendant-General of the Civil List, which he regarded as smystification. When he found it impossible

to obtain justice, he vowed vengeance against the king, without communicating his resolution to any body. He had been in the service of the House of Orleans since 1829. Lecomte then stated, that at half-past 9 o'clock in the evening of the 15th April, he left for Fontainebleau, where he arrived at 5 o'clock the next morning, and immediately proceeded to reconnoitre the ground. He alighted from the diligence at the hotel de l'Aigle Noir, followed the road of the Obelisque, and repaired by the avenue of Avon, to the rock. He intended at first to place himself in the churchyard, which looked into the royal park; but, having changed his resolution, he scaled the wall of the Petit Parquet. He vainly looked out for a ladder, and was in the act of piling faggots to reach the top of the wall, when he heard the noise of a carriage, mounted upon them as well as he could, and the king passing at the moment, he fired with precipitation two shots at the carriage. He had loaded the gun in the Parquet. He placed some shot and a bullet in the right barrel, and two bullets in the left one. Once in the forest, he had not returned to Fontainebleau, because he was well known in the town; he had breakfasted at an inn near Valvins, and then walked back to the parquet at Avon. He had concealed his gun under a rock in the forest. Being, at one o'clock in the afternoon of the 15th, on the Place du Carrousel, he had heard three servants belonging to the royal

household speak of the departure of the king for Fontainebleau. He went home, made his preparations to depart for that town, and not finding a seat in the six o'clock train he engaged one for nine o'clock. The double-barrelled gun was purchased by him before he had left the king's service.

The *President* observed, that it appeared by the books of the gunsmith, that he had purchased it on the 6th of May, 1844, that is four months after he had been dismissed the king's service, and that it was evidently for the purpose of committing the act he had been guilty of.

Lecomte maintained that he had purchased it whilst in the king's service.

Lecomte then entered into a long and passionate *exposé* of his grievances against the king, and having been asked by the president if he had an accomplice, replied, that the injustice he had suffered had alone prompted him to commit the attempt.

The *President* afterwards questioned him, respecting the meaning he attached to the following document found in his room:—"He who has committed the act is as brave as those who calumniate him. In his resolution he only sought success without heeding the danger to which he exposed himself. If he chose that spot it was by divine inspiration. The consolation of his holy work will accompany him in the grave."

Lecomte said, that before leaving Paris he had paid his landlord, and told him that he would, perhaps, return on the next day. His resolution was not then fixed. As to his will, everybody was at liberty to put upon it the construction they pleased; but he declared that he had not been influenced by any person, and that he acted from his own accord, actuated only by the sense of the injustice he had suffered.

The *President* then directed Lecomte to sit down, and commenced the interrogatory of the witnesses.

Count de Montalivet, the first witness examined, stated, that at five o'clock p. m., on the 16th of April last, being seated in the *char-à-bancs* of the king, on the first seat, to the left of his majesty, he heard at a short distance the report of two shots, the direction of which he was not able to judge. His first movement was to look at the king, and then at the queen, and the persons of the royal family. At that moment, the queen showed him the wadding of a gun, which her majesty had picked up between the king and him. His majesty, with the greatest calmness, told the postillions who appeared to hesitate, "Go on, go on," and shortly afterwards the royal party re-entered the palace. The moment the king had alighted, Count de Montalivet examined the *char-à-bancs* with the greatest care, and perceived in the roof of the carriage, above the seat the king had occupied, a certain number of holes made by bullets or buck shot. The wadding he had deposited in the hands of M. Desaix, king's attorney, at Fontainebleau.

M. Hebert, the Attorney-General, asked M. de Montalivet if the king had not visited Fontainebleau in May, 1844?

M. de Montalivet replied, that his majesty had visited Fontainebleau in that month.

M. Hebert next inquired if the king was not to have gone to that residence in November, 1845.

M. de Montalivet replied, that preparations had been made in October for that journey, which, however, had not taken place. He afterwards informed the court of the motives that induced him to dismiss Lecomte from the king's service, the principal of which was his insolence towards his superiors, and his overbearing tyranny towards his inferiors.

Lecomte, who had listened with particular attention to that part of M. de Montalivet's deposition, repelled those charges, and declared that if he had treated his inferiors with rigour, it was because his superiors and M. de Montalivet himself had recommended him to be severe.

M. Duvergier, the counsel of Lecomte, asked M. de Montalivet if he knew anything against the moral character of his client in the discharge of his duties.

M. de Montalivet replied, that no complaint against his morality had ever been made to him.

Goniat, the second witness, a piqueur, was riding at some distance before the royal carriage, when, on reaching close to the wall of the Petit Parquet, he heard the report of a shot, and on turning round, he saw Captain Brahaut, whose horse had taken fright, close by him. His first thought was that an accident had occurred, and that one of the captain's pistols had gone off. He rode towards the carriage, when he heard a second shot, and the queen cried out to him "*Goniat, en avant.*" That order was repeated by Millet to the postilion, Lecoute. He then galloped off, followed by Millet and several officers of hussars, and having opened the gate of the *parquet*, he posted himself with the officers, so as to watch all the avenues.

M. Borel, lieutenant of hussars, the third witness, accompanied the king in his promenade through the forest, on the 6th of April, and had seen the individual who fired upon his majesty.

M. Gournay, captain of gendarmerie, was riding behind the king's carriage at the moment when Lecomte fired upon his majesty. On being apprehended, Lecomte explained, "The king is not wounded, so much the better for him; he is more fortunate than I am."

Millet, a piqueur, the eighth witness, deposed that he was riding behind the royal carriage when the shots were fired, and looking up he saw a man, placed on the other side of the wall, whose head was covered with a blouse, and the lower part of the face concealed by a handkerchief. He rode towards the spot, stood erect on his horse, and leaping over the wall, saw Lecomte on a heap of faggots, ready to scale the wall, when he rushed upon him, seized his

gun, disarmed and arrested him. Lecomte offered no resistance, and appeared surprised. Lieutenant Deflandre having joined him, they secured his person, and found in his pocket a small phial, a looking glass, and some powder and bullets. The lieutenant having asked one of his gendarmes, named Trantmann, if he had not seen another individual running away, Lecomte said to him, "You know me well; my name is Lecomte. I am alone. I played a dangerous game; I have lost. The shots were fired by me."

M. Deflandre, a lieutenant of the gendarmerie, who was expecting the arrival of the king at the Porte Dorée. Saw Lecomte leaping down from the wall after he had fired. He rode to the gate of the *parquet*, which was unfortunately locked, but Millet having climbed over the wall arrested the accused. The gate having been opened, he entered the *parquet*, followed by the lieutenant of hussars. Morel and others assisted in apprehending the assassin, who exclaimed. "I am taken, it was I fired upon the king. You know me, lieutenant, my name is Lecomte."

M. de Monicault, Prefect of the Department of Seine at Marne, was seated in the second carriage. The moment he heard the explosion, he alighted, and having satisfied himself that the king, queen, and princes of the royal family were safe, he ran in the direction the assassin was supposed to have taken, accompanied by General Prevost and Colonel Berryer. They had proceeded a short distance, when a hussar apprised them of his arrest. On being asked by M. Duvergier if he had heard Lecomte say on his way to the prison, "The king is not wounded; so much the better for him: he is more fortunate than I am;" M. de Monicault replied in the affirmative.

M. Berryer, colonel of the 1st regiment of hussars, in garrison at Fontainebleau, gave an account of a conversation he had had with Lecomte after his arrest. Lecomte said, that having vainly remonstrated with the administration of the civil list, he had applied to the king personally. Not obtaining redress, he had resolved to avenge himself upon his majesty. "I have missed him," he said; "people will blame me, but I have as much heart as those who blame me."

M. Cante, the gunmaker who sold the gun, stated that when Lecomte presented himself in his establishment he told him he had been appointed keeper general of the forest of Compiègne. It was on the 6th of May, 1844, and he perfectly recognised the gun which was placed in his hands as the one he had sold. Lecomte appeared to be in a great hurry. The motive he alleged for purchasing a second gun was, that the one he possessed was too long, and that he wanted a shorter one as more handy for his service.

Mademoiselle Paschet, a print-seller on the Place du Carrousel, had seen the accused near her shop, on the 15th April, looking towards the palace, and listening to the conversation of three servants of the king's household, from

whom he learned that the king was going to Fontainebleau.

*Heroux*, one of those servants, noticed an individual who appeared to listen to their conversation. The king was just leaving at the moment for Fontainebleau.

*Liot*, administrator of the Fontainebleau stage coach, declared that Lecomte had engaged a seat in his carriage under the name of Lebrun, on the 15th April last.

A boy, one of the passengers in that coach, was next examined, and recognised the accused.

*Madame Bertant*, the innkeeper at Velvins, at whose house Lecomte breakfasted on the morning of the 16th April, recollected the circumstance. He was alone, spoke to nobody, and remained about an hour and a half in her house. (Oh being asked if he made any complaint.) "He did," replied the witness, "he complained of my wine."

*M. Vigorelli*, an inhabitant of Fontainebleau, met Lecomte in the forest, but was not present when he fired upon the king.

A sergeant of hussars, next examined, stated having seen Lecomte in town, with another individual, just as the king drove out from the chateau.

A soldier of the same regiment confirmed that statement, the correctness of which was contested by Lecomte, for the very good reason that he was interested, in not being seen at Fontainebleau.

Several other witnesses were afterwards examined, whose evidence threw no light on the affair.

*Gard*, an upholsterer at Fontainebleau, who had served with Lecomte in the chasseurs of the royal guard, mentioned several acts of brutality committed by the accused, during the campaign of 1823.

*Marrier de Bois d'Hyver*, *Legriel*, and *Savoie*, inspectors of the forest, bore testimony to the zeal and good conduct of Lecomte whilst he served under their orders.

#### Friday, June 5.

At 12 o'clock Lecomte was brought in by six gendarmes, and shortly afterwards the chancellor and the members of the court entered the hall. *M. Hebert*, the Attorney-General, and *M. Duvorgier*, the counsel of the accused, came next, and the court being seated, *Mr. Cauchy*, the Recorder, called over the names of the peers.

When he had concluded, the President invited the Attorney-General to develop his accusation.

*M. Hebert* said, that his task was easy in presence of an accused who confessed his crime. Since his arrest, Lecomte had sedulously endeavoured to impress on the minds of the magistrates that it had not been inspired by any political resentment, and the minute investigation which had been instituted into all the circumstances of the case had not elicited any proof to show that the accused had been influenced by political motives. The Attorney-General then proceeded to contend that the

crime had been long premeditated by the assassin. On the 15th January, 1844, he had tendered his resignation, which was accepted on the 26th of that month. On the 16th February he ceased his functions; he sold his horse in April, and on the 6th of May he came in from Fontainebleau to purchase the double-barrelled gun which he had subsequently used for the commission of his crime. In the evening he returned to Fontainebleau, where his absence had not even been remarked. What was his intention in purchasing that gun? It was because he had heard that the king was to arrive at Fontainebleau on the following day, and that he already meditated his assassination. It is to be supposed that no opportunity offered itself to him to execute that resolution. Lecomte shortly afterwards left Fontainebleau and took up his residence in Paris, but in the autumn of 1845 he again repaired to that town, where he was seen by several persons, because no doubt he was informed of the king's intention to spend a week in that royal residence. *M. Hebert* maintained that Lecomte evidently contemplated to assassinate the king at that period, and that no credit should be attached to his allegation that the first idea of that crime had originated in his mind two or three months previous to its commission. *M. Hebert* then proceeded to examine the grievances of Lecomte against the administration of the civil list, read the letters he had written to the conservator of the forests of the crown, the intendant of the civil list, and to the king, and showed that the ill-treatment he complained of was merely imaginary. The silence of the administration, the alleged disdain evinced by it with regard to his claims, and to the demand of the capitalization of his pension, which he knew could not be accorded, did not exist on the 6th of May, 1844, when he purchased a gun to kill the king. At that time he had not written to his majesty. *M. Hebert* then entered into a variety of other considerations to demonstrate the premeditation on the part of Lecomte. Reports had been circulated some days previous to the attempt that the king had been murdered. The investigations, wherever those rumours had been current, had convinced the instructing magistrates that they had no connexion whatever with the crime, and that Lecomte alone was guilty. The Attorney-General then presented a requisitory to the court to the effect of declaring Lecomte culpable of an attempt against the king's life, and condemning him to death.

*M. Duvorgier* next rose to present the defence of Lecomte. He might, he said, confuse himself to implore the mercy of the court in his favour, but he had other considerations to advise. He had studied the character of Lecomte in the long conference he had had with him, and he rested convinced, that at the moment he committed the crime, he was not in the full enjoyment of his faculties. He then recounted the military life of the accused, which must have been highly honourable, since he had been decorated with the order of the

**Legion of Honour.** In the discharge of his duties, whilst in the service of the civil list, he had been constantly remarked for his zeal and good conduct. He had resigned his functions because he had considered himself aggrieved. His resentment alone had blinded him, and, as he declared himself, he had not been influenced by bad advisers or accomplices. Lecomte had never belonged to any particular political party. The owner of the circulating library which he frequented, declared that the only journal he read was the *Petites Affiches*, and the motive of his preference for that journal was, that he expected to find in it a situation. He saw, that in order to obtain an honourable situation, a certain sum was required as a security, and this had been his reason for demanding the capitalization of his pension. M. Duvergier then undertook to prove, that Lecomte could not have contemplated the murder of the king as far back as May, 1844, or October, 1845, and to substantiate his opinion he read the letters he had written to his majesty since that period, and which were full of expressions of respect and affection. Reverting to his military career, he read a number of documents, describing him as a good and brave soldier. The colonel of the regiment of chasseurs of the royal guard, in which he had served, had addressed to him (M. Duvergier) a certificate highly honourable to his client. At the battle of Carolina he had so distinguished himself, taking prisoner a superior officer of the Spanish cavalry, and having been allowed five crosses of the Legion of Honour for his regiment, he did not hesitate to bestow one on Lecomte. In Greece he had similarly distinguished himself. On one occasion, the corps to which he belonged having been obliged to retrograde, Lecomte, then aide-de-camp of general Church, being stationed at the rear-guard, saw a young English officer on the point of falling into the hands of the Turks. He gave spur to his horse, charged the enemy, and was fortunate enough to rescue the officer from their hands. Lecomte had fought several duels, in every one of which he had behaved with the greatest generosity, receiving the fire of his opponent and discharging his pistol in the air. When in the service of the administration of the civil list, he had deported himself with zeal, honour, and irreproachable probity, according to the statement of all his superiors. M. Duvergier then read a letter which Lecomte wrote in January, 1835, to his sister, on the occasion of the death of his mother, and which breathed the utmost tenderness for his parent. M. Duvergier contended, that Lecomte was to the present hour intimately convinced of having been the victim of an unpardonable injustice. It was a real monomania, a mental aberration, a fixed idea. Borrowing an expression of Sir Robert Peel, he declared Lecomte to labour under a morbid vanity. He then explained what would be the course pursued in England with respect to his client; and stated, that when an attempt directed against the person of the sovereign was not inspired by political passions, the culprit

was only sentenced to transportation. Of the three individuals lately tried in England for a similar crime, not one had been convicted of high treason. In conclusion, M. Duvergier repeated his conviction, that his client did not enjoy the use of his faculties, that his will was not free at the moment he committed his crime, and implored in his favour the commiseration and clemency of the court.

M. Hebert, the Attorney-General, having risen, said that he should not have again addressed the court, if the counsel of the accused had confined himself to recommend him to the commiseration of his judges, but he combated the plea of insanity as completely misplaced.

M. Duvergier replied in a few words, and the accused having declared that he had nothing to add to his defence, the president announced the close of the trial. Lecomte was then removed from the dock, and the public galleries were cleared at half-past three o'clock. At four, the court was to meet again to deliberate.

A few minutes before six o'clock the Chancellor and Peers re-entered the court. The doors were again opened to the public, but the tribune of the journalists was alone filled. The prisoner's counsel, M. Duvergier, was in court, the accused (according to the custom of the court) not being present. In the midst of a profound silence the Chancellor then read the sentence of the court, which was as follows:—

"Whereas Pierre Lecomte, a guard-general of the forest of Fontainebleau, was guilty, on the 16th of April last, of an attempt on the king's person and life, by the use of a fire-arm :

"The court, in virtue of the articles 86, 88, and 302 of the Penal Code, condemns the said Pierre Lecomte to the punishment applied to parricides. The sentence of the court therefore is, that the prisoner shall be taken to the place of execution in his shirt, and barefooted; and there, his head covered with a black veil, he shall remain exposed on the scaffold while a *kussier* reads to the people the sentence of the court, and he shall immediately afterwards be beheaded."

## LEGAL BIOGRAPHY.

JOHN TROTTER BROCKETT, F.S.A.

WE are glad of an opportunity to mark our respect for this learned and estimable member of the larger branch of the profession, and are indebted for the following Memoir to Mr. John Fenwick, of Newcastle-upon-Tyne.

"The life of a country solicitor, engaged from 'morn to dewy eve' in the round of professional duties, does not ordinarily afford those incidents which render biography entertaining and instructive. And yet, we not unfrequently see, in the faculty of the law, men with minds so constituted that, in the most pressing engagements, they can find ease and relaxation in the simple change of study, and



grasp intelligence on subjects which, to an ordinary observer, seem alien to what has not inaptly been termed 'a legal mind.' Mr. Brockett was emphatically a lawyer—a diligent and painful student of the law—of great and extensive practice in it—and yet, as matters of amusement and relaxation, he grappled, but always with the hand of a master, with general literature, antiquities, and lexicography—he brought numismatics under searching criticism—he sounded the depths of constitutional learning, and displayed an acquaintance with political science, which, in another walk of life, would have led to distinction.

"Mr. Brockett was the eldest son of the late Mr. John Brockett, formerly of Witton Gilbert, and afterwards, for a long series of years, the Deputy Prothonotary of the local Courts of Record of Newcastle-upon-Tyne. On the family removing to Gateshead, which town was conveniently situated for the elder Mr. Brockett's residence, young Brockett was placed under the care of the Rev. William Turner, then the preceptor of a limited number of young gentlemen. His proficiency under this admirable teacher was most gratifying, and laid the foundation of a warm friendship between the master and the pupil, which closed only at death. The elder Mr. Brockett was a profound mathematician, and when his son was not engaged with Mr. Turner, he had him under his own care in the Prothonotary's Office, studying with closeness and intense application, the most exact of human sciences.

"When the younger Mr. Brockett reached the proper age, he selected the law as the object of his pursuit, and was placed in the office of the late Mr. Carr, where he remained for a year or two, and then removed to the chambers of Messrs. Clayton & Brumell, at that time the principal solicitors in the North of England. I had been acquainted with Mr. Brockett since March, 1802, but it was not until he became a clerk to Mr. Carr, that a close intimacy was formed between us. The law, till then, had been a dry and barren field to me, and I had determined on forsaking it the moment I could have my articles cancelled. My friend suggested the propriety of our meeting on an evening in every week, after the labours of the day, and discoursing on law subjects only. We did so; we read—we disputed—we prepared pleadings, briefs, and assurances in supposed cases, the consequence of which was, the imparting of a taste for forensic subjects, and an impulse in the acquisition of legal knowledge, of which I yet feel the force, and experience the advantage. I have often seen Mr. B. at those meetings, wield the golden metwand of the law with admirable precision, and anticipate the status he was afterwards to take.

"After Mr. Brockett had served his articles, he became managing clerk to Mr. Donkin, who was then rising into great eminence as a solicitor. Having spent a short time with Mr. Donkin, he was admitted an attorney, and practised as such for many years in Newcastle,

with distinguished ability and success. In the early part of his professional career, he was extensively employed as an advocate in the Mayor's and Sheriff's Courts of Newcastle, then under the able presidency of the greatest of provincial lawyers, the late Mr. Hopper Williamson, and dealing with pleas, generally cognizable only in Westminster Hall. In the management of his causes, Mr. B. displayed that tact and discriminating judgment, aided by a manly and impressive eloquence, which, had he been called to the bar, would have secured to him the honours of the noble profession to which he belonged; but the turn of his mind was to tenures and conveyancing, and in both of those branches of recondite learning he excelled. No man could read an abstract with a clearer head, or with a sounder judgment than Mr. Brockett; and the conveyances which flowed from his pen, displayed a beauty, a compactness, and a harmony of parts, most delightful to the student of the *Formulare Anglicanum*. But his highest praise as a professional man is, that his practice was marked by the strictest integrity and liberality, and that his numerous friends with implicit confidence committed their concerns to his guidance and direction.

"When a very young man, Mr. Brockett took an active part in the affairs of the Literary and Philosophical Society of Newcastle, and in the various discussions that took place at the meetings of that body. The society soon appreciated his attainments, and placed him, first on its committee of management, and then in the office of secretary, which situation he held until his death.

"Mr. Brockett's passion for antiquities was excited by a friend presenting him with some duplicate coins, and he became, in consequence, a member of the local Society of Antiquaries, almost, if not quite, from its very commencement, and for many years previously to his death, a member of the council of that body, and one of the most intelligent and best informed of the gentlemen who assembled at the meetings of the society.

"Mr. Dibdin, in his 'Northern Tour,' very justly states that Mr. Brockett 'may be considered the father of the *Typographical Society* established at Newcastle: His *Hints on the propriety of establishing* such a society having appeared in 1818:—a short tract of six pages.' But he was not only the father of that society, but one of the principal contributors to the splendid series of tracts issued from its press—a series which has raised the typographical character of the town, to a first-rate eminence in the republic of letters.

"He translated and published, in connection with this society, Beauvais' celebrated 'Essay on the Means of distinguishing Antique from Counterfeit Coins and Medals,' to which he added many important notes and illustrations. Mr. Martin, in his *Bibliographical Catalogue of privately-printed Books*, has enumerated this and several others of Mr. B.'s beautiful productions. But the works by which he was

most distinguished, are his 'Enquiry into the Question, whether the freeholders of Newcastle-upon-Tyne are entitled to vote for Members of Parliament for the county of Northumberland,' and his 'Glossary of North Country Words.' The first of those publications, replete with constitutional and antiquarian lore, received the high commendations of Mr. Hopper Williamson and other lawyers, and the latter is appreciated wherever the English language is known. Mr. B. had, at the time of his death, made considerable preparations for a third edition of the glossary, and his only surviving son Mr. William Edward Brockett, with filial piety for the memory of his lamented father, and to satisfy the demand of the public for a new edition of the work, has brought the present edition through the press, availing himself of the kindly literary aid of Sir Cuthbert Sharpe; George Taylor, Esq., of Witton-le-Wear; Francis Mewburn, Esq., of Darlington; the Rev. Dr. Darnell, of Stanhope; Mr. John Turner, of Newcastle, and other respected friends of his late father, who have taken a lively interest in making the work as perfect as possible. But the general diffusion of education tends to make the English nation 'of one language and of one speech;' and the time seems not to be far distant when the north country words, which Mr. Brockett has collected with so much care, will, in the strictest sense of the term, be *Archaïsons* even in Northumberland.

"The health of Mr. Brockett, for the last twenty-five years of his life, was such as to preclude his going much into company, but he spent such portions of his time as he could spare from the laborious duties of his profession, in those literary and scientific pursuits for which he had so very refined a taste and ability. He formed a splendid cabinet of coins and medals, which, after a sale in June, 1823, of ten days' continuance, by Mr. Sotheby, of London, realized 1,760*l.* 13*s.* 6*d.* His library of scarce and curious books in the December following, was sold by the same gentleman. The sale continued fourteen days and realized 4,260*l.* Mr. Brockett had a small collection of prints and portraits, which was, with that of the late Dr. Whittaker, the historian, sold by Mr. Sotheby, in January, 1824, and realised 60*l.* 3*s.* 6*d.* A catalogue of the books, with the prices realized, was published, and is still referred to, as an authority for the value of the works comprised in it.\* At those sales Mr. Brockett had the gratification of seeing the most gifted men of the day in competition for

the beautiful works which he had displayed so much judgment in collecting. But he was not a bare collector. He knew the value of his books, in the intelligence and wisdom treasured in their pages, and the uses of his coins and medals, for the illustration and confirmation of history.

"Immediately after those sales, Mr. Brockett started *de novo* in his favourite pursuit of collecting. And he made such rapid progress in this delightful work, that when Dr. Dibdin visited him in 1837, the learned author of the *Bibliographical Decameron*, seems to have been astonished at what he saw and heard at Mr. Brockett's house. The greatest of Bibliomanists thus expresses himself: 'In fact, the zeal, activity, and anxiety of my friend in all matters relating to the literary, scientific, and antiquarian welfare of his native [adopted] town, have no limits and know no diminution. They rise up and lie down with him. One thing particularly struck me, in his closely-wedged miscellaneous collection—the choice and nicety of each article:—A *golden Nero*, or a first *Walton's Angler*, was as well nigh perfect as it might be; and his *Horsley* was only equalled by his *Hock*.' In another part of his book, Mr. Dibdin gives the reader the following graphic sketch of his visits to Mr. Brockett:—'More than once or twice was the hospitable table of my friend, John Trotter Brockett, Esq., spread to receive me. He lives comparatively in a nut-shell—but what a kernel! Pictures, books, curiosities, medals, coins—of precious value—bespeak his discriminating eye and his liberal heart. You may revel here from sunrise to sunset, and fancy the domains interminable. Do not suppose that a stated room or rooms are only appropriated to his books; they are 'up-stairs, down-stairs, and in my lady's chamber.' They spread all

Gardner's *England's Grievance*, 1655, 20*l.* 7*s.* 6*d.*

Garland's (*Right Choice and Merrie Collection of*.) made by William Garret, 6 vols., 10*l.* 10*s.*

Glossary of North Country Words, an Original Manuscript, compiled by Mr. Brockett, 8*l.* 8*s.*

Hogarth's *Genuine Works* published by Boydell, 13*l.* 5*s.*

Holbein's *Heads of the Court of Henry VIII.* 25*l.* 5*s.*

Holme's *Academy of Armoury*. Chester, 1579, 13*l.* 10*s.*

Magna Charta, printed in gold, 54*l.* 12*s.*

Northumberland Household Book, 1770, 10*l.* 10*s.*

Prynne's *Works and Parliamentary Writs*, 183*l.* 15*s.*

Mr. Lambton was much disappointed at this sale, in not buying the splendid copy of Bourne's *History of Newcastle*, on large paper, and illustrated with numerous drawings and prints, which was purchased by Mr. Jupp, for 54*l.* 12*s.*"

\* "The late Earl of Durham, then John George Lambton, Esq., purchased some of the brightest gems in the collection. The following is a list of them, with the prices at which they were sold: They now constitute part of the library of Lambton Castle:—

Allan Tracts, Darlington (Collection of,) 52*l.* 10*s.*

Edmonston's *Baronagium Genealogicum*, 6 vols., 17*l.* 17*s.*

over the house—tendrils of pliant curve and perennial verdure. For its size, if I except those of one or two *Bunnatyners*, I am not sure whether this be not about the choicest collection of books which I saw on my tour. Mr. Brockett is justly proud of his *Horsley*;—he opened it with evident satisfaction. They are all at Newcastle necessarily *Horsley-mad*. I suffered him to enjoy his short-lived triumph. His copy was upon small paper; of most enviable size and condition. ‘Were you ever at Belvoir Castle?’ observed I, ‘Never,’ replied he. ‘Then take care never to visit it; for there is a copy upon LARGE PAPER, such as eye never beheld. Having seen and caressed it, you will throw this into the Tyne.’ ‘I shall take care to avoid Belvoir Castle,’ was my friend’s reply.

“Mr. Brockett may justly boast of a superb series of *Roman gold coins*, from Julius Cæsar to Michael VIII. Paleologus; and although his collection does not comprise every known variety, it contains all the specimens of any rarity and interest. What renders it more peculiarly valuable is the exquisite state of preservation of the whole. But here are also *British gold and silver coins* of our Henrys and Edwards, and medals which illustrate in particular the local history of Newcastle. Nor is my friend a mere collector of these things. The numismatic blood tingles in his veins: he is deeply read in numismatic lore; at times evincing the taste of Eckhel, and the learning of Rasch.’

“It only remains for me to state, that in domestic life Mr. Brockett was a pattern of all that was amiable. His family participated with him in his favourite studies and pursuits, and his home was the abode of peace and happiness. Some years previously to his death, he lost his eldest son, when that son’s genius was streaming forth in every direction, and indicating a career of no ordinary character. He sustained the shock with surprising fortitude, but it may have been the remote cause of his death, which occurred on the 12th of October, 1842, when our lamented Glossographer was only in the 54th year of his age. At the time of his death, Mr. B. was F.S.A., London, and, as I have already stated, of the Council of the Society of Antiquaries, and Secretary of the Literary and Philosophical Society of Newcastle-upon-Tyne. The Council of the Society of Antiquaries, and the Committee of the Literary and Philosophical Society followed the remains of their old friend and associate to their resting place, whilst his pall was borne by Dr. Headlam, Mr. Adamson, and other friends, who had enjoyed a closer intimacy with the eminently-talented and honoured individual, whose loss was so generally deplored.”

The following is a List of Mr. Brockett’s Works:—

An Enquiry into the Question whether the Freeholders of the Town and County of Newcastle-upon-Tyne are entitled to vote for Mem-

bers of Parliament for the County of Northumberland. 8vo., pp. 51. 1818.

Hints on the Propriety of Establishing a Typographical Society in Newcastle-upon-Tyne. (200 copies printed.) 1818.

A Catalogue of Books and Tracts printed at the private Press of George Allen, Esq., F.S.A., at Darlington. (100 copies printed.) 1818.

A Letter to the Rev. Henry Phillpotts, M.A., Prebendary of Durham. 1819.

Memoirs of Thomas and John Bewick, prefixed to the Edition of Bewick’s Select Fables. 1820.

Selecta Numismata Aurea Imperatorum Romanorum Ex Museo Iovannis Trotter Brockett, Partes Prima & Altera. (32 copies printed.) 1822.

A Glossary of North Country Words, in Use, from an Original Manuscript in the Library of John George, Esq., M. P., with considerable additions, by John Trotter Brockett, F.S.A. London and Newcastle.

Newcastle-upon-Tyne: Printed by T. & J. Hodgson, for E. Charnley, 1825. Pp. 243. 600 copies printed in crown octavo, and 32 copies in royal octavo.

A Glossary of North Country Words, in Use; with their Etymology, and Affinity to other Languages; and occasional Notices of Local Customs and Popular Superstitions. By John Trotter Brockett, F. S. A. London and Newcastle.

Newcastle-upon-Tyne: Emerson Charnley, Bigg Market, and Baldwin & Cradock, London, 1899. Pp. 343. Reprinted, 300 copies printed in crown octavo, 50 copies in royal octavo, and 2 in quarto. Printed by T. & J. Hodgson.

A Postscript to an Enquiry into the Question whether the Freeholders of Newcastle-upon-Tyne are entitled to vote for Members of Parliament for the County of Northumberland. 8vo. Pp. 50. 1831.

Several Papers in the *Archæologia Æliana*.

The following works were edited by Mr. Brockett:—

An Essay on the Means of distinguishing Antique from Counterfeit Coins and Metals, translated from the French of M. Beauvais, with Notes and Illustrations by John Trotter Brockett, F.S.A. (209 copies printed.) 1819.

The Episcopal Coins of Durham, and the Monastic Coins of Reading, minted during the reigns of Edward I., II., and III., appropriated to their respective Owners; by the late Benjamin Bartlet, F. S. A. A New Edition, with Notes and Illustrations, by John Trotter Brockett. (105 copies printed.) 1817.

A Short View of the Long Life and Reign of Henry the Third, King of England; presented to King James, 1627. (100 copies printed.) 1817.

An Exact Narration of the Life and Death of the Reverend and Learned Prelate, and Painful Divine, Launcelot Andrews, late Bishop of Winchester, 1650. (80 copies printed.) 1817.

A *Memoir on the Origin of Printing*; addressed to John Topham, Esq., F. R. & A. SS. By Ralph Willett, Esq., F. R. & A. SS. (32 copies printed.) 1818.

A *Remembrance of the Honours due to the Life and Death of Robert Earl of Salisbury, Lord Treasurer of England, &c., 1612.* (136 copies printed.) 1818.

His Majesty's passing through the Scots armie; as also his Entertainment by General Leely. Together with the Manner of the Scots marching out of New-castle; related by the best Intelligence. Printed in the year 1641. (101 copies printed.) 1820.

An *Experimental and Exact Relation upon that famous and renowned Siege of Newcastle, the Divers Conflicts, and Occurrences that fell out there during the time of Ten Weeks and odd days, and of that Mightie and Marvellous Storming thereof, with power, policie, and prudent Plots of Warre; together with a succinct Commentarie upon the Battell of Bowden Hill, and that Victorious Battell of York or Marston Moore, never to be forgotten, by him who was an eye-witness of the Siege of Newcastle, William Lithgow, 1645.* (201 copies printed.) 1820.

A *Particular Relation of the Taking of New-castle, expressing the faire meanes which were used to gaine the Towne; the Summons sent unto them, and the many Letters past betwixt His Excellency the Earl of Leven, Lord General of the Scottish Armie and them, with the Manner of Storming the Towne; the Rendering of the Castle, and their Condition since; together with a letter from the Committee with the Scottish Army to the Committee of both Kingdoms here; and sent by an Express to the Commissioners of Scotland, Oct. 29, 1664.* (200 copies printed.) 1825.

A *Full Relation of the Scots March from Barwicke to Newcastle, with Eighteen Thousand Foot, Three Thousand Horse, Five Hundred Dragons, and a Hundred and Twenty Pieces of Ordinance. Also, their Message to the Governour of Newcastle, and their Propositions to the Cavaliers, and their several Answers about the Surrendering of Newcastle. Together with a relation of xi. of the Erle of Warwick's ships appointed to fall upon vii. ships which lay at Newcastle laden with malignants' goods, intended for Holland; as it was delivered to the Parliament, by a Messenger from the Scot Armie, 1644.* (202 copies printed.) 1827.

## THE LAW STUDENT.

No. 8.

### DEFICIENT MEANS OF STUDY FOR ARTICLED CLERKS.

To the Editor of the *Legal Observer*.

SIR,—I have from time to time indulged in hopes that your exertions in behalf of the extension of professional education, would be attended with the success they so richly merit,

as well in the country as in the metropolis. In this, however, I have experienced disappointment; not to be wondered at, perhaps, when we consider the supineness of those whose anxious care ought to extend itself to the improvement of the individuals committed to their care.

It is a fact which I can assert without the slightest fear of contradiction, that beyond providing the necessary office books of practice, the generality of country solicitors take no pains whatever in imparting legal instruction to their clerks. Young gentlemen, fresh from school, and unaccustomed to the bustle of business, are articulated in offices of eminence, the principals of which receive premiums, ranging from one to three or four hundred pounds; and so soon as the articles are executed, the clerks, being duly installed, are left to their own guidance, to pick up, if they have the inclination, snatches of law, by occasional practice in copying drafts, or listening to conversation with clients.

Well, what then are the consequences? They are, in the words of Thomson, in his "*Suggestions*,"—"That young men, being most naturally prone to ease and pleasure, find it more agreeable to spend their time in lounging and amusements, attendance upon the ladies, &c., then in the grave employments of professional practice and study, for which they were placed in that situation, and for the advantages of which a considerable premium has been paid."

But let us suppose, that so far as reading is concerned, the clerk is really wishful to benefit himself.—What ought he to read? and in particular, what ought he not to read? The "*Articled Clerks' Manual*," a work of great benefit to clerks in general, and one which no tyro in the law should be without, says that the number of hours daily "*must not be less than six*."—No person really in earnest reads less than this: if properly spread throughout the day, we do not think *ten* too much." Now, this is excellent advice for such as can profit by it. But amongst the great number of country clerks, is there one who can really carry this out? Many of them are lightly worked certainly. No need for them to appear at the office before *ten* in the morning: no need for them to remain there later than *five* in the afternoon. They even may claim an interval of *two hours* for dinner-time; but out of all this leisure, not one person in twenty whom I know possessing it, do I find carrying out the advice I have quoted. And for a good and simple reason; he has no one to direct him:—his master attends not to his progress:—he has hired clerks who can do his *work*; and is too much occupied by the business of his clients to bestow any thoughts on the education of his clerks.

Let us turn now from those who possess the opportunity and neglect to improve it, to those who possess it not. I allude to the clerks whose pecuniary circumstances require a closer application to business than that bestowed by their more favoured brethren. They are re-

quired to be at the office by nine in the morning, and they quit it never before seven, often so late as eight in the evening. They have an interval of an hour for dinner, *et voilà tout*.

Now where is the opportunity to read ten or six hours a day? An hour in the morning, and perhaps two hours at night, will be the utmost time a working clerk can spare: and often not even that; for he may reside some miles from the office; and much time may be consumed *eundo et redeundo*.

Having pointed out evils or abuses, it would ill become me to quit the subject without suggesting a remedy if I am able to do so—and there is a remedy; one that will benefit both the classes of clerks, the *rich* and the *poor*. Let the country solicitors establish law lectures;—let them encourage the formation of societies for mutual improvement amongst their clerks;—let them afford leisure once or twice a week for the attendance of their clerks at lectures, readings, or discussions;—and the consequence cannot fail to be beneficial to both. The clerks will acquire theoretical knowledge and become anxious to reduce it into practice; and the masters will secure much and valuable assistance from them in matters too important to be confided to the mere engrossing clerk.

In conclusion, while I apologize for troubling you with this long letter, let me add, that I would not have done so had I not thought it might tend, in some slight degree, to the realization of a plan similar to the one I have mentioned. I am convinced that there are many solicitors who would willingly join in promoting the good work; and, on behalf of the clerks, I think I may safely add, that to them it would be a boon, of no little value.

Z.

## SELECTIONS FROM CORRESPONDENCE.

### THE SMALL DEBTS BILL.

SIR,—While others write so frequently to you on the principles of this very objectionable measure, the like of which you have for many years consistently opposed, will you give me leave to draw attention to the clause relating to advocates and their fees, (s. 97):—a clause very important to attorneys, and which, in fact, is said by the supporters of the measure to constitute their chief objection to it. Giving them, as a class, credit for acting from higher motives than those imputed, I would ask, is it anything but fair and proper that they should protect their own interests? I would also ask, if any thing can be more insignificant, more pitiful, than the remuneration here provided? Nothing, if the debt is under 40s.—well and good! such cases do not generally require the intervention of an attorney or any other third party. If above 40s., the framers of the bill think legal assistance may possibly be advantageous, and then they allow the attorney 10s.,—who, sir, is supposed in these cases to get up evidence,

to visit and get together the witnesses, to address the court, and to pay the clerk of the court for the summonses, &c. Thus, 5s. I will suppose he will get by many hours harassing work. The same observations will apply, though the legislature allow him 5s. more for his trouble. Is it, sir, pretended, that any gentleman of respectable business will employ himself in this way? or is it intended to create all over the country a set of practitioners with loose qualifications, and still looser morals? Why, the same authority that tells an attorney he shall not make more than 5s. or 10s. for each job, requires him to pay 185*l.*, (reckoning compound interest on the stamp duty,) before he shall be allowed to make these mighty gains. The education of an articulated clerk costs (considering his unproductiveness to himself while under articles) at least 1,000*l.*, and I should be glad to be informed whether his practice in the "Small Debts Court" would be likely to give him 5s. per cent. on this sum. I think, sir, it is no monstrous proposition to say, that an attorney is entitled to a fair and adequate remuneration for his trouble and for the application of his information to the affairs of his client.

FAS.

### NOTICE TO QUIT.

A. is the owner of a farm, which he mortgages to B., who enters into possession and into the receipt of the rents. During the time he is mortgagee in possession, the agent of the mortgagee lets the land to C. at a yearly rent. A., the owner, dies, devising the estate to D. on trust. The estate is sold by the mortgagee by auction, and does not realize sufficient to pay principal and interest. Subsequent to the sale by auction, and previous to the completion of the purchase, D., the trustee under the mortgagor's will alone, gives notice to the tenant to quit. Is the notice valid? The rent was paid to the agent of the mortgagee.

CIVIS.

### SALE OF TITHES.—RAILWAY.

1. If a lay impropriator, where the tithes have been commuted, sell several of his rent charges to the respective landowners, what title must be given them before they will be entitled to merge such rent charges? Will not a simple receipt for the sale and a receipt for the purchase money be sufficient?

2. A railroad is projected and carried out through a parish of which the tithes were before commuted. Can the tithe-owner call upon the directors for payment of the whole of the rent charges upon the lands through which it passes, and in case of non-payment must notice of distraint be given for each division separately, and separate distraints be made upon each land, or will one notice for the whole be sufficient? And may one distraint be made upon any part of the line for the whole?

J. A. W.

VALUE OF COPYHOLDS.

In my progress through that volume written by Mr. Joshua Williams "for the use of Students in Conveyancing," I have tumbled into a quagmire of perplexity, from which it would be a superlatively Samaritan act of charity to extricate me. Perhaps you will perpetrate this little labour of love. In the chapter "*Of estates in copyholds*," the author of the above-mentioned book, after informing his readers that the lord of the manor "possesses a right to all mines and minerals under the lands, and also to all timber growing on the surface," but that he "cannot come upon the lands to open his mines, or to cut his timber, without the copyholder's leave," draws this strange conclusion:—"Hence," he says, "*it is that timber is so seldom to be seen upon lands subject to copyhold tenure.*" Now this does appear to me to be a most absurd *non sequitur*. Surely every one of common sense would come to the very opposite conclusion. For if the lord cannot cut down the timber and the copyhold tenant cannot cut down the timber, it would be natural to suppose that copyhold lands would be covered with trees rather than destitute of them.

TYRO.

SERVICE OF WRIT.

SIR,—Being a subscriber to your invaluable work, and I hope improved by its perusal, I take the liberty of putting a question to you, namely,—within what period must you indorse the memorandum of service on a writ of summons? Now, Sir, this seems a simple question, but there are so many conflicting opinions on the subject, that I should like to have your advice.

F. F.

[After a writ has been served, it is requisite, within three days at least, to indorse on the writ the day of the week and month of such service, otherwise the plaintiff will not be at liberty to enter an appearance according to the statute, and the affidavit on which the appearance is entered must state the day on which the indorsement was made. See the 3rd rule of Michaelmas Term, 3 W. 4, 1832. For the forms, see Bagley's Practice, p. 81, No. 10, 11.—ED.]

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Appeal.—House of Lords.

ACCOUNT.

See *Trusts*.

CHARITY.

*Corporation.—Prohibition against alienation.—Pleading.*—The act 39 Eliz. c. 5, enables "all and every person and persons" to found hospitals for the poor, and to incorporate them:—A municipal corporation is included in the

words "every person and persons," and may exercise the powers given by the act. A voluntary conveyance of real estates to a charity is not defeated by a subsequent conveyance of them for valuable consideration. Real estates conveyed to, and vested in, an hospital founded under the act, 39 Eliz. c. 5, cannot be alienated by the hospital, nor can it confirm an alienation of them by the founders. A municipal corporation voluntarily founded an hospital under the act 39 Eliz. c. 5, and purchased real estates, and caused them to be conveyed to the hospital, but which were kept under the control and management of the founders, who afterwards sold and conveyed them for valuable consideration, granting to the purchasers covenants for title and indemnity against the claims of the hospital. The founders applied the money produced by the sale, together with other monies of their own, in the purchase of an estate at W., and they paid annually to the hospital more than the rents and profits of the sold estates. The hospital at first concurred in that arrangement, and acquiesced in it for 120 years; after which the Attorney-General and the hospital, by information and bill, claimed a part of the estate at W., bearing the same proportion to the whole estate that the produce of the sale of the hospital's estates bore to the whole purchase money of the estate at W.: Held, 1st, That the estates conveyed to the hospital were well vested in it, and could not be sold without an act of parliament, and therefore a decree directing the hospital to confirm the sale, was in that respect erroneous.

2nd, That if the hospital's concurrence and long acquiescence in the arrangement for the sale of its estates were held to bar its right to recover them, or a commensurate portion of the estate of W., the Attorney-General's right to protect the charity still existed.

3rd. *Semble*, that though the hospital's bill should be dismissed, the Attorney-General's information would be retained. *Corporation of Newcastle v. The Attorney-General and others*, 12 C. & F. 402.

CORPORATION.

See *Charity*.

DELAY.

See *Divorce*.

DIVORCE.

1. *Delay explained.*—A husband, immediately after his wife's elopement, brought an action and obtained a verdict for damages against the adulterer, and also proceeded against the wife in the Ecclesiastical Court, and obtained a divorce there, but did not for five years from the elopement apply for a divorce in parliament.

The delay was held to be sufficiently accounted for by the absence of the wife in America, and by the inability of the husband, in consequence of his affliction, to attend to any business. *In the matter of Heaviside's Divorce Bill*, 12 C. & F. 333.

2. *Husband's conduct.*—A husband lived

separate from his wife for many years, without making any provision for her maintenance from his means, which were sufficient: *Held*, not to be entitled to a divorce, though the adultery of the wife was clearly proved. *In the matter of Simmons' Divorce Bill*, 12 C. & F. 239.

3. *Neglect.—Practice.—Standing orders.*—In prosecuting a divorce bill, a letter written by the wife, admitting her adultery, but imputing the blame to her husband for neglecting her and exposing her to temptation, is to be regarded more as an excuse invented to palliate her guilt than as founded in truth, and therefore, does not require strong rebutting evidence.

The husband's attendance at the bar on the second reading of his bill for a divorce, in compliance with the standing order, No. 142, may be dispensed with, on petition of his attorney, showing reasonable grounds for his non-attendance. *In the matter of Schuidham's Divorce Bill*, 12 C. & F. 363.

#### FACTOR.

*Trover.*—“*Intrusting.*”—*Factor's Act.*—A foreign owner of goods consigned them to a factor in London, to whom he indorsed the bill of lading in blank, and transmitted it, with instructions to receive and sell the goods. The factor received the goods, paid the freight and charges thereon, and entered them in his own name at the Custom House, by reason of which, and without the privity or express assent of the owner, he obtained a dock warrant, which he pledged for advances beyond the amount for which, as a factor, he had a lien on the goods: *Held*, that under these circumstances, he was not intrusted with the dock warrant within the meaning of the 2nd section of the act 6 Geo. 4, c. 94.

There is a distinction between persons intrusted with goods and with the documents mentioned in the act.

An intrusting with the bill of lading, for the purpose of the sale of goods, is not an intrusting with the dock warrant which represents those goods, notwithstanding that the possession of the bill of lading enables the holder of it to obtain possession of the dock warrant. *Hatfield v. Lewis*, 12 C. & F. 343.

#### FOREIGN JUDGMENT.

*Plea.—Sufficiency of averments.*—Judgment was given by competent tribunals in France, against Garcias, in an action brought by him against persons with whom he had been connected in a loan transaction, for the purpose of obtaining from them an account, and payment of his share of the profits in the loan. He afterwards filed a bill in the Court of Chancery against some of the same persons, and for the same purposes, charging that the proceedings and judgment of the French tribunals were contrary to justice, and were not final and conclusive, and also, that subsequently to the date of the said judgment further profits accrued to the defendants from the said loan, and he claimed a right to a share of them: *Held*, that a plea of the foreign proceedings and judg-

ment, set forth in substance and effect, filed by the defendant to the bill, supported by averments, that the matters in issue in the foreign tribunals were the same as the matters put in issue by the bill, covered the whole of the matters comprised in the bill, and was a sufficient answer thereto.

In pleading a foreign judgment, it is not necessary to set forth the proceedings and judgment at length. *Ricardo v. Garcias*, 12 C. & F. 368.

#### HUSBAND'S CONDUCT.

See *Divorce*, 2.

#### NEGLECT.

See *Divorce*, 3.

#### PLEADINGS.

See *Charity; Foreign Judgment.*

#### TROVER.

See *Factor.*

#### TRUSTS.

*Public purposes.—Parties interested.—Account.*—In an agreement between King James I. and the city of London, in 1609, for a grant by the king of lands in Ireland, to be planted and colonized by the city; it was stipulated that 20,000*l.* should be advanced, to be expended on the undertaking. The city compulsorily levied that and other sums for the same purpose, upon the incorporated companies of London. The king afterwards granted a charter, creating a corporation, (The Irish Society,) the members thereof to be from time to time appointed by the city, for the management of the plantation, and to whom the lands were thereby granted for ever. The greater part of the land was afterwards divided in severalty between the companies in the proportion of their contributions to the sums levied on them; but the town lands, ferries, and fisheries, were retained by the Irish Society, who, after applying part of the rents and profits towards the building of churches, schools, and other public purposes beneficial to the plantation, divided the surplus among the companies. One of these filed a bill against the society and other parties, charging that the society were trustees for the companies, and were guilty of breaches of trust in applying among their own members large sums in gifts, and in travelling and other expenses, and calling on them for an account: *Held*, that the Irish Society were constituted trustees for permanent public purposes independent of the companies, and had a discretion in applying the funds arising from the property retained by them to those purposes: that though they were accountable to the crown for any neglect of their duty as trustees, and also to the city of London for misconduct in the management of the property, they were not accountable to the companies. *Skinner's Company v. Irish Society and others*, 12 C. & F. 426.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

## Rolls Court.

*Larking v. Oldham.* July 24th.

## INCAPACITY OF RECEIVER.

*Where a receiver has become mentally incapacitated from performing the duties of his office, the court will allow the person who has managed the estates to pass his accounts in lieu of the receiver; but whether any salary will be allowed to him query?*

In this case the receiver having shortly after his appointment become incompetent to manage the estates of which he was appointed to receive the rents, or to perform any of the other duties of his office, another person had, with the concurrence of all parties, received the rents and managed the property, and application was now made by petition for an order that such party should be allowed to pass his account, instead of the receiver.

Mr. Poole supported the petition.

The Master of the Rolls said, that on an affidavit being produced, that the party in question had attended to the management of the property, he would make the order; but whether he would be allowed any salary might be questionable.

*Bligh v. Bossley.* July 26th.

## EVIDENCE.—CERTIFICATE OF BURIAL.

*Semble. Production of a certificate of marriage may be dispensed with on a petition for the transfer of a fund in court, provided evidence of the marriage be given by parties present when the ceremony was performed, and it is supported by other corroborative circumstances.*

THIS was a petition for the transfer of a fund in court to the trustees of a settlement made on the marriage of the petitioner and his wife. The marriage was celebrated at Calcutta, on 22nd of April, 1834, and a settlement of the fund in question was executed some months previous to the marriage. Evidence of the marriage was given by the affidavit of two persons who were present at the ceremony, and also by the affidavit of the husband, and the execution of the settlement was also proved; but a certificate of the marriage had not been obtained, the object being to get a transfer of the fund while the petitioner remained in England when he had come on furlough.

Mr. Nichols for the petitioner.

The Master of the Rolls felt inclined to dispense with the certificate and to make the order; but on being informed that the parties were not prepared with a certificate of the burial of the tenant for life, he refused to interfere, and ordered the petition to stand over.

## Vice-Chancellor of England.

*Bulwinkle v. Vorwing.* July 24th.

## DISMISSAL OF BILL.—PAYMENT OF MONEY OUT OF COURT.

*A defendant who has paid money into court is entitled, on the dismissal of the bill, to have it repaid to himself, without notice to the other parties to the suit.*

THIS suit was instituted for the administration of a testator's estate, and the defendant had paid into court a sum of money admitted to have been received by him as executor. An order having since been obtained for the dismissal of the bill, a petition was presented by the defendant for repayment to himself of the amount paid into court. Pending the proceedings, the plaintiff's solicitor had been transpired for felony, and the petition could not therefore be served in the regular way, and although some of the plaintiffs had been served personally, the defendant had been unable to serve the others, as they could not be found.

Mr. Craig, for the defendant, asked for an order on the petition.

The Vice-Chancellor said, that as the money had been paid into court by the executor, he was entitled to have it out again on the suit being dismissed, and he did not consider service of the petition necessary.

*Mason v. Wakeman.* July 16th.

## DEMURRER.—EXCEPTIONS.—CONSTRUCTION OF ORDER 38 OF AUG. 1841.

*If a general demurrer will lie to a bill, a defendant may, under the 38th Order of August, 1841, decline answering such portions of the bill as he objects to answer, although he may have answered the remainder.*

THIS suit was instituted by a party claiming to be tenant in tail of certain freehold and copyhold property in Hereford, and the bill prayed, among other things, a discovery and an account of the rents and profits. The defendant answered certain portions of the bill, but declined answering the remainder, on the ground that an affidavit denying the possession of the title deeds ought to have been annexed to the bill, which had not been done. Exceptions were thereupon taken to the answer for insufficiency, which were referred to the Master and allowed by him, he stating his opinion that it was not intended by the 38th Order that the Master should decide upon a question of general demurrer. The defendant excepted to this report, and his exception now came on for argument.

Mr. Stuart and Mr. Bayley, in support of the answer, contended that the terms of the order were so clear and explicit, that it was impossible any different construction could be put upon it to that which had been held in *Tipping v. Clark*, 2 Hare, 392, and *Drake v. Drake*, *ibid.* 647.

Mr. G. W. Collins, contra, cited *Baddeley v.*



*Curwen*, 2 Coll. 151, in which it had been decided that the order did not extend to a case where interrogatories are objected to only on the ground that a demurrer to the whole bill, if filed in time, would have been sustainable; also *Molesworth v. Howard*, 2 Col., 145.

The Vice-Chancellor said, the real question he had to decide was what was the inference to be drawn from the language of the order. His Honour said his attention had been particularly called to the point in consequence of the difference of opinion between Vice-Chancellor *Knight Bruce* and Vice-Chancellor *Wigram* as to the proper construction of this order, the former of whom was reported to have said that it would be most inconvenient if the Master were to be required to decide as to the propriety of a demurrer. To that view his Honour said he could not subscribe, for he thought the arrangement would be very convenient. But be that as it might, his simple business was with the order itself, and he had nothing to do with the views entertained by others. It was clear in the case his Honour had supposed that when there were 1,000 interrogatories and only one had been answered, the Master must decide on the ground of the general demurrer. In this view he was justified by the opinion of Vice-Chancellor *Wigram*, who was known to have taken a prominent part in the compilation of these orders. He should therefore allow the exception to the report.

*Clare v. Clare.* June 22nd.

BILL, AMENDMENT OF.—CONSTRUCTION OF ORDER 16, ART. 33, AND ORDER 66 OF MAY, 1845.

*Where a bill has been amended under the above orders, it cannot be further amended even by adding parties, without a special order for the purpose.*

THE bill in this case was filed for the administration of the trusts of a will, and a reference to the Master having been ordered, to see if all proper parties were before the court, the Master had found that the personal representative of one of the parties interested was not a party to the suit.

Mr. *Bird* now moved for an order of course to amend by adding such party, but the bill having been previously amended, and the Master of the Rolls having held that in such a case it was necessary to give notice of the motion,

The Vice-Chancellor said, he should follow the rule laid down by the Master of the Rolls, and that a special order must therefore be obtained.

Queen's Bench.

(Before the Four Judges.)

*Leyton v. Hurrey.*—Easter Term, 1846.

TRESPASS.—PLEADING.—SALE OF CATTLE UNDER 5 & 6 W. 4, c. 59, s. 4.

*The statute 5 & 6 W. 4, c. 59, s. 4, provides,*

*that a person impounding cattle must provide them with food, and after the expiration of seven days, he shall be at liberty to sell any such horse, ass, &c., to reimburse himself for the keep and expenses, rendering the overplus, if any, to the owner of such horse, &c. To an action of trespass for taking seven horses and selling two, the defendant pleaded that the horses were trespassing, &c., and that he sold two of them to reimburse himself for the expense of the keep of all.*

Held, after verdict for the defendant, that the plea was bad for not alleging that it became necessary to sell two of the horses in order to defray the expenses incurred, and a rule was made absolute for judgment non obstante veredicto.

THIS was an action of trespass tried before Mr. Baron *Parke*, on the Norfolk circuit, and to so much of the declaration as related to taking and impounding seven horses, and selling two of them, the defendant pleaded, that the said horses were wrongfully depasturing in his close, that he impounded them, provided them with proper food, and, at the expiration of seven days, sold two of them by public auction and applied the proceeds of the sale in discharge of the value of such food and expenses of the sale as he lawfully might under the statute 6 & 7 W. 4, c. 59, s. 4. *Replication de injuria.* Verdict for the defendant on that issue. A rule was afterwards obtained on behalf of the plaintiff, for judgment non obstante veredicto, on the ground that the plea does not justify the act of trespass complained of, because it does not allege that there was any necessity to sell two of the horses in order to defray the expenses incurred.

Mr. *Gunning* and Mr. *Couch* showed cause. The 4th section of the statute provides against animals being kept in the pound without food, and directs that the person impounding shall give them proper nourishment, and the remedy given to reimburse himself is twofold,—either to go before a magistrate who has power to order him a sum not exceeding double the value of the food supplied; or, after the expiration of seven days, he may sell such animal, reimburse himself, and return the surplus (if any) to the owner. The plea is good after verdict, and justifies the act complained of. Nothing in the statute is said as to the averment that it became necessary to sell more than one of the animals impounded. The interpretation clause (21 sec.) enacts that the singular shall include the plural. [Lord *Denman*, C. J. You must contend you might sell all seven horses for a feed of corn supplied to each.] The statute will admit of that construction, because each animal is liable to be sold to reimburse the party for the food supplied to it. The defendant is at liberty to sell after the expiration of seven days, but he has no power to make a second sale, provided the proceeds of the first are insufficient, and it may frequently be very difficult to decide whether at a public auction the proceeds arising from the sale of

one of the animals will be sufficient to cover all the expenses incurred. Still this is not such an abuse of power as would make the defendant a trespasser *ab initio*. The plaintiff, to have availed himself of this objection, should have new assigned. *Shorland v. Govett*,<sup>a</sup> *Smith v. Egginton*.<sup>b</sup>

Mr. Sergeant Byles, *contrà*. The plea must follow the authority given by the statute, which, on a fair and liberal construction, must mean, not that each horse may be sold for the cost incurred by each, but that one or more may be sold to defray all the expenses, and if it should become necessary to sell more than one, the necessity to do so must be alleged on the plea in order to justify the trespass. (Stopped by the court.)

Lord Denman, C. J. I think the word "shall" must in the 4th section of this statute be read "may." The person who sells is bound, after reimbursing himself, to pay the difference between his claim and the produce of the sale to the owner. The amount of his claim is limited. The statute gives him power to sell, but at the same time he must exercise a sound discretion whether the sale of one or more horses is necessary to reimburse himself; and the plea should show that in the exercise of that discretion the sale of two of the horses did become necessary.

Mr. Justice Williams. The question is, whether the plea discloses a defence under the act of parliament. The statute gives two remedies, the one is, that the defendant may sell the horses in order to repay himself the expenses incurred, rendering the overplus, if any, to the owner. What is implied by that is, that those sold were necessary for the purpose of reimbursing himself for the food supplied; therefore, I think this plea is bad, because it does not aver that the sale of these horses became necessary for that purpose.

Mr. Justice Coleridge. I am of the same opinion. The defendant seeks to avail himself of a statutable authority, and the question is, whether the plea is good under the statute. The power is to sell either one or more that may be required to defray the expense of the keep. Here the defendant has sold two horses to pay for the keep of seven for seven days, and I think he should have shown a reasonable necessity for doing so. It has been said in argument, that there is no power under the statute to make a second sale, if the produce of the first should prove insufficient, but I do not see anything in the statute to prevent a second sale, provided it should be rendered necessary.

Lord Denman, C. J. The rule will be absolute for judgment *non obstante veredicto*. We do not say that the defendant is a trespasser *ab initio*.

Rule absolute for judgment *non obstante veredicto*.

## Exchequer.

*Aston v. Perkes*. 2nd May, 1846.

PAYMENT OF MONEY INTO COURT.—ASSAULT.—JUSTICE.—EXCISE OFFICER.

*In trespass for breaking the plaintiff's close and seizing and laying hold of the plaintiff and ejecting him therefrom, the defendant paid 25l. into court, upon the sufficiency of which issue was joined and a verdict found for defendant. On motion for judgment non obstante veredicto, on the ground that under the 3 & 4 W. 4, c. 42, s. 21, money could not be paid into court in actions for assault and battery.*

Held, that the plea was good, inasmuch as, for anything which appeared on the record, it might have been pleaded by a justice or excise officer, who are not required by the rule of Trinity Term, 1 Vict., to state the character in which they plead it.

TRESPASS for breaking and entering the plaintiff's close, and *seizing and laying hold of* the plaintiff and ejecting and expelling him therefrom, the defendant, by leave of a judge, paid 25l. into court in satisfaction of the damages. The plaintiff replied that he had sustained damages to a greater amount, upon which issue was joined and a verdict found for the defendant.

Gray obtained a rule *nisi* to enter the judgment for the plaintiff *non obstante veredicto*, or why judgment of repleader should not be awarded, on the ground that money could not be paid into court in an action for assault and battery. He referred to the 3 & 4 W. 4, c. 42, s. 21, which enacts that it shall be lawful for the defendant, in all personal actions, (except actions for assault and battery, false imprisonment, libel, slander, malicious arrest, or prosecution, criminal conversation, or debauching of the plaintiff's daughter or servant,) by leave of any of the superior courts, or a judge to pay into court a sum of money by way of compensation or amends, &c.

Whately and Unthank showed cause. The argument fully appears from the judgment. They referred to 24 Geo. 2, c. 44, s. 2; 3 & 4 Will. c. 53, ss. 34, 38, 106; 8 & 9 Vict. c. 87, ss. 36, 48; 7 & 8 Geo. 4, c. 53, s. 104; *Colvert v. Mogg*, 10 Adol. & E. 632, Hobart, 164; *Griffith v. Williams*, 1 T. R. 710.

*Cur. adv. vult.*

Pollock, C. B., delivered the judgment of the court. (After stating the facts his lordship proceeded.) Mr. Gray insisted that, under the 3 & 4 W. 4, c. 42, the court or a judge had no power to permit money to be paid into court in an action for assault and battery, as this is. Messrs. Whately and Unthank showed cause, and their argument was, that although the plea would not be sanctioned by the 2 & 3 W. 4, yet that there were cases in which persons filling a particular character had a power of pleading in this form to actions of battery, and therefore the plea was not necessarily bad. The instances were those of justices and excise

<sup>a</sup> 5 Bar. & Cress. 483.

<sup>b</sup> 7 Adol. & Ellis, 167.

officers. The 24 Geo. 2, c. 44, s. 4, enables a justice, (in an action for anything done in the execution of his office,) by leave of the court, to pay into court such sum as he shall think fit, "whereupon such proceedings, orders, and judgments shall be had made and given in and by such court as in other matters where the defendant is allowed to pay money into court." The 3 & 4 W. 4, c. 53, s. 106, which received the royal assent fourteen days after the 3 & 4 W. 4, c. 42, gives a similar power to excise officers. The 8 & 9 Vict. c. 87, which was also cited, does not apply, for it did not receive the royal assent till the 4th August, 1845, which must have been after the trial of this cause. At the time of passing the acts of the 24 Geo. 2, and 3 & 4 W. 4, c. 53, the mode of paying money into court was by an order striking the amount of the money paid out of the amount of damages, and preventing the plaintiff from recovering, unless he proved beyond the amount paid into court. The consequence was, that the court or judge making the order not only exercised the discretion as to allowing the payment, but determined whether the defendant was a justice or officer, and whether he was acting in execution of his office in the matter which was complained of in the action. After the passing of the 3 & 4 W. 4, c. 53, the new rules were made by the judges, and the money paid into court must, no doubt, be paid according to the rules, whether by a justice or excise officer, and the question is, what form of plea is required by the new rules in such cases. The rule 17 is, that the payment shall be pleaded *in all cases and as near as may be* in the form set out *mutatis mutandis*, which form is amended by rule, in Trinity Term, 1 Vict. If it had been intended that in the special cases of justices and officers entitled to pay money into court by different statutes the character of the defendant should be stated in the plea, it is very reasonable to suppose that the rule would have provided for such a statement. It has not done so: all character of the defendant is omitted, and there are very strong reasons why it should be, for the effect would be to give the plaintiff the power of taking issue on the fact of the defendant being such justice or officer, and also on the fact whether he was acting in the execution of his duty, and thus transferring to the jury the right to decide those questions of fact which at the time of the passing of the 24 Geo. 2, c. 44, and 3 & 4 W. 4, c. 53, and the then prevailing practice were determinable, and conclusively determinable, by the court only, or a judge subject to appeal to the court. The object of the new rule was only to put the statement of payment of money into court on the record, and so save the defendant the trouble and expense of proving the judge's order. We think that the true construction of the rule is, that the form is to be adopted in all cases of payment of money into court in any action, without stating the character of the defendant, and that the provision that the plea is to be "*as near as may be*" in that form, and "*mutatis mutandis*," is only to

authorise such alteration as may be necessary in order to adapt the plea and the names of the parties, to the form of the action, to the sum paid, and the like. We therefore come to the conclusion that this plea is good, because for anything that appears on the record, according to which alone we are to give judgment, it may have been pleaded by a justice or officer entitled by statute, and the new rules together, to such a plea.

Rule discharged.

### Bankruptcy.

In re Peter Flinton. 12th August, 1846.

#### COMPULSORY ACT OF BANKRUPTCY.

*Insufficiency of excuse for non-appearance of a trader debtor, summoned under the 5 & 6 Vict. c. 122.*

A CREDITOR filed an affidavit of debt in this court, pursuant to the provisions of the 5 & 6 Vict. c. 122, and P. Flinton, the trader debtor, was duly served with a summons in the usual form, calling upon him to appear this day, and admit the demand, or depose on oath that he believed he had a good defence to such demand.

The trader debtor did not appear to the summons, but in his stead his solicitor appeared, and produced an affidavit made by a third person, who described himself as a surgeon, stating that the party summoned could not attend by reason of illness, and that his state of health rendered it improbable that he would be able to make a journey to London for some weeks hence. The attention of the commissioner was then called to the 13th section, which recites, "that if any such trader so summoned shall not come before such court at the time appointed, (having no lawful impediment made known to and proved to the satisfaction of the court at the same time); or if any such trader, upon his appearance to such summons, or at any enlargement or adjournment thereof, &c.;" and it was submitted that under this section the court had an implied authority to adjourn the consideration of the summons if the debtor was unable to attend.

Mr. Commissioner Goulbourn had no doubt the court had the authority under the act of parliament to enlarge or adjourn the time within which a trader was to appear and admit or deny the creditor's demand, if sufficient cause was shown. The question here was, whether "a lawful impediment was made known and proved to the satisfaction of the court." Here the affidavit on which the court was called upon to act merely stated, that the debtor was unable to attend from illness. It did not give any information from which it could be inferred that the debtor would be able to attend at a future day, if such day were now named for his appearance. It was also insufficient in not stating that the debtor, if he were able to appear, intended, or would be able, to swear that he believed he had a good defence to the cre-

ditor's demand. If the debtor was ready to admit the demand, there was no necessity for his personal appearance, as section 17 of the act provided, that an admission of the debt may be signed elsewhere than in court, if attested by the attorney of the trader. Every one who had experience in the Court of Bankruptcy knew that the interests of creditors were often essentially compromised by even a short delay in the issue of a fiat, and not feeling that a case of lawful impediment had been made out in this case to the satisfaction of the court, the law must take its course, and he should decline to enlarge or adjourn the summons.

An objection was then taken to the affidavit of debt, on the ground, that it appeared by it that the debt was incurred for goods sold and delivered by the creditor to the debtor, but it did not state the words "on request," or any equivalent words; which it was said were necessary in an affidavit to hold to bail by order of a judge in the superior courts at Westminster.

The Commissioner, after reviewing all the authorities on this point and adverting to the rule of Hilary Term, 2 W. 4, was of opinion that the objection must be overruled, and that the affidavit of debt was sufficient.

## CHANCERY SITTINGS.

Michaelmas Term, 1846.

Lord Chancellor.

AT WESTMINSTER.

Monday	Nov. 2	Appeal Motions.
Tuesday	3	{ (Petition-day) Cause, Lunatic, and Bankrupt Petitions.
Wednesday	4	{ Appeals.
Thursday	5	
Friday	6	
Saturday	7	
Monday	9	
Tuesday	10	{ Appeal Motions.
Wednesday	11	
Thursday	12	{ (Petition-day) Unopposed Petitions only and Appeals.
Friday	13	
Saturday	14	{ Appeals.
Monday	16	
Tuesday	17	
Wednesday	18	
Thursday	19	Appeal Motions.
Friday	20	{ (Petition-day) Unopposed Petitions and Appeals.
Saturday	21	{ Appeals.
Monday	23	
Tuesday	24	
Wednesday	25	

Vice-Chancellor of England.

Monday	Nov. 2	Motions.
Tuesday	3	Petition-day.

Wednesday	4	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday	5	
Friday	6	{ Short Causes, Unopposed Petitions and Causes.
Saturday	7	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday	9	
Tuesday	10	
Wednesday	11	
Thursday	12	Motions.
Friday	13	{ (Petition-day) Unopposed Petitions, Short Causes, and Causes.
Saturday	14	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday	16	
Tuesday	17	
Wednesday	18	
Thursday	19	Motions.
Friday	20	{ (Petition-day) Unopposed Petitions, Short Causes, and Causes.
Saturday	21	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday	23	
Tuesday	24	
Wednesday	25	

Vice-Chancellor Knight Bruce.

Monday	Nov. 2	Motions.
Tuesday	3	{ (Petition-day) Petitions and Causes.
Wednesday	4	{ Bankrupt Petitions and Causes.
Thursday	5	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday	6	
Saturday	7	Short Causes and ditto.
Monday	9	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	10	
Wednesday	11	Bankrupt Petitions.
Thursday	12	Motions and Causes.
Friday	13	{ (Petition-day) Petitions and Causes.
Saturday	14	Short Causes and Causes.
Monday	16	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	17	
Wednesday	18	{ Bankrupt Petitions and Ditto.
Thursday	19	Motions and Causes.
Friday	20	{ (Petition-day) Petitions and Causes.
Saturday	21	Short Causes and Causes.
Monday	23	{ Pleas, Demurrers, Exceptions, Causes, & Further Directions.
Tuesday	24	
Wednesday	25	Motions.

Vice-Chancellor Stirling.

Monday	Nov. 2	Motions and Causes.
Tuesday	3	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday	4	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Thursday	5	
Friday	6	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday	7	

Saturday . . . 7	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 9	{ Pleas, Demurrers, Excep- tions, Causes, and Fur.
Tuesday . . . 10	{ Dirs.
Wednesday . . . 11	{
Thursday . . . 12	Motions and ditto.
Friday . . . 13	{ (Petition-day) Pleas, De- murrers, Exons., Causes, and Fur. Dirs.
Saturday . . . 14	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 16	{ Pleas, Demurrers, Excep- tions, Further Dirs. and
Tuesday . . . 17	{ Causes.
Wednesday . . . 18	{
Thursday . . . 19	Motions and Ditto.
Friday . . . 20	{ (Petition-day) Pleas, De- murs., Exons., Causes, and Fur. Dirs.
Saturday . . . 21	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . . 23	{ Pleas, Demurrers, Excep- tions, Causes, & Further
Tuesday . . . 24	{ Directions.
Wednesday . . . 25	Motions and ditto.

#### MASTERS EXTRAORDINARY IN CHANCERY.

From July 24th, to August 18th, 1846, both inclusive, with dates when gazetted.

Barton, Samuel Milner, Manchester. Aug. 4.  
Bowen, William, Stafford. Aug. 18.  
Cudworth, John William, Leeds. Aug. 7.  
Fox, Charles James, Canterbury. July 28.  
Frankish, William, Kingston-upon-Hull. July 31.  
Hancock, Frederick, Shipston-on-Stour. Aug. 14.  
Huxley, Thomas Robert, Worcester. Aug. 11.

#### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From July 24th, to August 18th, 1846, both inclusive, with dates when gazetted.

Garbett, Edmund, and James Dulling, Wellington, Attorneys and Solicitors. Aug. 11.  
Jones, Robert Henry, and William Malet Dansey, 7, Weymouth Street, Portland Place, Attorneys and Solicitors. July 24.  
Leigh, Robert, and Thomas Warden, Bardon, Attorneys, Solicitors, Stewards and Agents. Aug. 14.  
Pierson, James Henry George, and Richard Grant Tucker, Tiverton, Attorneys and Solicitors. Aug. 4.  
Tyndall, Thomas, Henry Witton Tyndall, and William Tyndall, Birmingham, Attorneys, Solicitors, and Conveyancers. Aug. 11.

#### PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

Royal Assents. 26th August, 1846.

Ecclesiastical Patronage.  
Tithe Amendment Act.

Patent Commissions.  
Poor Removal.  
Death by Accidents Compensation.  
Commons Inclosure, No. 3.  
Pauper Lunatics and Asylums.  
Commons Inclosure Amendment Act.  
House of Commons Offices.

#### House of Lords.

BILLS PASSED.

Salvage.

BILLS IN PROGRESS.

Juvenile Offenders.  
General Registration of Deeds.  
Punishment for deterring Prosecutors' Witnesses, &c.  
Game Laws.  
Small Debt Courts:  
St. Austell.  
Birkenhead.  
Drainage of Land.

#### House of Commons.

BILLS PASSED.

Railway Commissioners.  
Private Bills.  
Small Debts.

BILLS IN PROGRESS.

Northampton Small Debts Court.  
Registration of Medical Practitioners.  
Insolvent Debtors Amendment Act.

#### THE EDITOR'S LETTER BOX.

WE are requested by a Correspondent to state the name of the counsel who was engaged in the case at Guilford on the 1st instant, noticed under the head of "Medical Jurisprudence," at p. 361, *ante*. We have mislaid the letter of the Correspondent who sent us the report, and beg he will send us another copy.

By the 8th section of the Attorney and Solicitors Act, 6 & 7 Vic. c. 73, it is enacted, that the attorney to whom a clerk is articulated, must make, or cause to be made, an affidavit of his admission and the execution of the contract between him and the clerk. J. H. P. inquires, "Whether the affidavit of the attesting witness to the articles, with the words 'duly admitted one of the attorneys of her Majesty's Court of Queen's Bench' added to the description of the attorney to whom the clerk is articulated will be a sufficient compliance with the act?" We think the fact should be sworn to positively, and not put by way of description. Would an indictment for perjury lie, if the statement were made in the manner proposed?

The further letters on the Small Debts Bill will appear next week.

*Erratum*.—P. 395, in the head note of the case *Re Alvey*, for *part* maintenance read *part* maintenance.

# The Legal Observer.

SATURDAY, SEPTEMBER 5, 1846.

—“ Quod magis ad nos  
Pertinet, et noscire malum est, agitamus.”

HORAT.

## LEGAL RESULTS OF THE SESSION.

THE parliamentary session of 1846 has at length closed,—a session equally remarkable in a political and a legal aspect. It is not within our province to comment on the effects of the gradual abolition of the Corn Laws, which constituted the great act of the session.\* Our duty is limited to the measures which have effected any material change in the laws relating to the administration of justice. After noticing what *has* been done in this respect, we shall advert to the projects which were contemplated, but have *not* yet been carried into effect. We must at present confine ourselves to a concise statement of the scope and purport of these statutes, and shall enter as early as may be convenient into the details of the several enactments, with more or less fulness of disquisition, according to their respective importance and difficulty.

The most remarkable of the acts which have been passed in the last session are :—

1. The Small Debts or Local Courts Act, 9 & 10 Vict. c. 95.

2. The Abolition of the exclusive Privilege of Sergeants at Law in the Court of Common Pleas, (c. 54.) See p. 431.

3. The Acts giving Compensation for Deaths by Accident, and Abolishing Deodands.

4. The Abolition of a large class of Pauper Removals and of the Litigation consequent thereon.

5. The Railway Companies Dissolution Act, c. 28, p. 260.

The other acts of less moment, yet neces-

sary to be known by the practitioner, are the following :—

6. Regulating the Construction of Buildings in the Metropolis, (9 Vict. c. 5.) See the act, p. 358, *ante*.

7. The Annual Indemnity Act, (c. 13.) See p. 91, *ante*.

8. Insolvent Debtors in India, (c. 14.)

9. Inclosure of Lands, (c. 16.) See p. 315, *ante*.

10. Railway and other Deposits, (c. 20.) See p. 235, *ante*.

11. Administration of Criminal Justice, (c. 24.) See p. 286, *ante*.

12. Preventing Malicious Injuries to Persons and Property, (c. 25.) See p. 312, *ante*.

13. Superintendence of Convicts, (c. 26.) See p. 314, *ante*.

14. Amending the Laws of Friendly Societies, (s. 27.) See p. 385, *ante*.

15. Corresponding Societies and Lecture Rooms, (c. 33.) See p. 361, *ante*.

16. Legalizing Art Unions, (c. 48.) See p. 403, *ante*.

17. Repealing the Pains and Penalties for certain Religious Opinions.

18. Commons Inclosure Amendment Act.

19. Pauper Lunatics and Asylums.

20. Tithe Amendment Act.

21. Patent Commissions.

22. The several acts continuing the Copyhold Commission,— Highway and Turnpike Acts, &c., (cc. 49-52.) See pp. 428, 429, *post*.

23. Railway Commissioners.

24. Wreck and Salvage.

25. Private Bills.

26. Drainage of Lands.

27. Contagious Diseases.

28. Pawnbrokers.

29. Books and Engravings, 9 & 10 Vict.

c. 58. See p. 429, *post*.

\* The act will be found at p. 385, *ante*.

Such of these acts as were passed down to the last few weeks of the session have been already printed in our pages, and the remainder shall speedily follow. We now proceed to make a few observations on the five acts which we consider to be of professional importance.

#### SMALL DEBTS ACT.

The most important of these acts,—and indeed, of all that have been passed since the abolition of Arrest,—is that for establishing local courts under the name of “The more easy Recovery of Small Debts and Demands.” The readers of the *Legal Observer* who have stood by it from its origin in 1830, are aware of our exertions on this long agitated question, session by session for sixteen years. First it made its appearance as a “Local Judicature” Bill, under the auspices of Lord Brougham, then Lord Chancellor. Subsequently it underwent various changes,—at one time seeking merely to regulate County courts; at others to include the administration of Criminal justice. At one time Sergeants at law and barristers were to be the judges, but generally Attorneys at law were also rendered eligible; and lastly, it was grafted on a Small Debts Bill. It has been taken up and abandoned by various administrations,—Tory and Conservative,—Whig and “something more.” In the session of 1845, “the small end of the wedge” was introduced by authorizing the enlargement of the existing local courts, and enabling attorneys as well as barristers to act as judges.

No doubt, the bill, as brought in by the late, and adopted by the present, government, was more comprehensive than the act of 1845; but in its progress through parliament the jurisdiction of the courts has been much narrowed, and we think it would have been just and proper, (aye and expedient,) to include attorneys as eligible for the office of judge.

Now, however, that the act has passed, it will be our duty to deal candidly, though freely, with it. We well know that the feeling of the profession at large is that of respect for the laws, and it becomes the duty of the practitioner to carry out the intention of the legislature, so far as may be consistent with the interests of their clients. But with all due veneration for our lawgivers, we must venture, on behalf of the profession, to scrutinize the act minutely, and consider its sufficiency to effectuate the object set forth in the pre-

amble, and particularly to examine the various clauses by which the principle of the act is to be worked out.

In our next number we hope to give a complete analysis and classification of the clauses of the act. Partly from the various alterations to which it was subjected in its progress, the enactments are not very happily arranged. We shall also print the act *verbatim*, and add such notes as may appear useful.

#### COURT OF COMMON PLEAS.

The abolition in the Court of Common Pleas of the exclusive audience of sergeants-at-law, and the admission of the bar in general, must be admitted to be a beneficial measure. Yet there are not a few who, being warmly attached to our ancient institutions, will regret the change. Apart also from this sentiment, others will apprehend, that by admitting counsel indiscriminately, one material object is lost sight of,—that of forming separate bars, and preventing the inconvenience of counsel practising in various courts, and being engaged in one when they are retained to appear in another. That object, however, we trust, will be attained by other and better means,—to which both branches of the profession should apply themselves.

#### COMPENSATION FOR DEATHS BY ACCIDENT.

The Act for Compensating Deaths by Accident will afford satisfaction alike to the public and the profession. Nothing can be more manifestly just than that railway companies and others who have the lives of her Majesty's subjects in charge, and who, in case of personal injury arising from neglect or carelessness, would be liable to an action for damages, should be answerable to their families, whenever such injuries terminate in death. Such already is the law of Scotland.<sup>b</sup> The lamentable deaths occasioned by railway negligence will, we trust, be diminished in number. In any future instance, we doubt not that the jury will do their duty, and in some cases the damages must be many thousand pounds, as probably they would have been in the much-lamented case of the late Mr. Boteler, the Commissioner in Bankruptcy.

#### POOR REMOVAL.

The act which has undergone so much discussion by which a large measure of re-

<sup>b</sup> See p. 356, *ante*.

straint has been put on the removal of the poor from one parish to another, will, no doubt, be productive of benefit to that unfortunate class of the community. Though the rates of individual parishes may, in some instances, be increased to an amount which they may deem unequal when compared with their former state, yet the change will be accompanied by mitigating circumstances, and will not fail, we trust, to be, on the whole, beneficial. This enactment is, however, only a partial remedy of the evil which was complained of, and another and more extensive alteration in the Poor Laws may be anticipated at no distant period. In the meantime, doubtless, a large branch of parochial litigation will be suspended or destroyed. When all the legal business of parishes was transacted by solicitors, this change would have been felt by a considerable number of that branch of the profession; but since the passing of the Poor Law Act much of that department of business has fallen into the hands of clerks of boards of guardians, who, in too many instances, are not members of the profession. This, we trust, will ultimately be put on the right footing. The present act has passed without the proposed clause, which from its vagueness and generality might have enabled boards of guardians to appear by unprofessional officers in all litigated matters.

#### " DISSOLUTION OF RAILWAY COMPANIES."

The Act 9 & 10 Vict. c. 28, for giving facilities in the dissolution of railway companies is also a beneficial measure, and will enable both shareholders, directors, and their legal advisers, to wind up an unsuccessful project more speedily and effectually than could be done under the ordinary law of partnership. There is one clause to which we may advert more fully hereafter, but which should be noticed on this occasion,—we mean the 32nd section, by which no action can be brought for the solicitor's costs until the expiration of a month from the delivery of the bill, and the courts of common law are authorized to refer such bill to be taxed, with the usual powers relating to taxations.

Having thus taken a rapid review of the bills which have passed, we shall now, in conclusion, enumerate the measures which were introduced at the commencement, or

during the progress of the session, but have not been carried through. They are the following :—

In Conveyancing Reform :—The General Registry of Deeds Bill and the Short Forms of Conveyances Bill.

In the law of Debtor and Creditor :—The Bankruptcy and Insolvency Bill and the Judgment Creditors' Bill.

The Amendment of the Highway and Turnpike Acts.

In Criminal Law :—The Bills relating to Juvenile Offenders, and the Punishment for deterring Prosecutors, Witnesses, &c.

The Game Law Amendment Bill.

The Church Discipline Amendment Bill.

The Registration of Medical Practitioners Bill.

Some of these measures are of great importance, and will probably be introduced early in the next session.

## NOTES IN EQUITY.

PRIVILEGE.—DISTINCTION BETWEEN THE CASE OF A DEFENDANT AND OF A WITNESS.

"ACCORDING to the general rule," says Lord Langdale, "every defendant is bound to discover all the facts within his knowledge, and to produce all documents in his possession, which are material to the case of the plaintiff. However disagreeable it may be to make the disclosure, however contrary to his personal interests, however fatal to the claim upon which he may have insisted, he is required and compelled under the most solemn sanction to set forth all he knows, believes, or thinks, in relation to the matters in question. The plaintiff being subject to the like obligation on the requisition of the defendant in a cross bill, the greatest security, which the nature of the case is supposed to admit of, is afforded for the discovery of all relevant truth, and by means of such discovery this court, notwithstanding its imperfect mode of examining witnesses, has at all times proved to be of transcendent utility in the administration of justice. It need not be observed what risks must attend all attempts to administer justice in cases where relevant truth is concealed, and important it must be to diminish those risks; and that, if there be any cases in which, for predominant reasons, parties ought to be permitted or to be held privileged to conceal relevant

<sup>c</sup> See the act, p. 260, *ante*.



truth, those cases ought to be strictly defined and strictly limited by authority."

These are the general remarks which fell from the court in disposing of an important case on *privilege*, recently reported by Mr. Beavan.<sup>a</sup> His lordship having laid down the general rule as to the necessity of unreserved disclosure by defendants, proceeds to deal with the difficult question, how far and under what circumstances shall this general rule be departed from, where professional confidence is attempted to be set up as an impediment. "The arguments," he remarks, "in some late cases seem to have assumed that concealment of the truth was, under the plausible name of protection or privilege, an object which it was particularly desirable to secure, forgetting, as it would seem, that the principle upon which this court has always acted is to promote and compel the disclosure of the whole truth relevant to the matters in question, and that every exception requires a distinct and sufficient justification. It is singular that it should have become necessary to observe, that cases of discovery from defendants in courts of equity, which are the only cases now under consideration, relate to the admissions of parties, and not the testimony of witnesses; that these are not cases in which parties in all courts are held entitled to insist (as their own privilege) that their legal advisers shall not be permitted to disclose confidential communications."

We are therefore to keep in view the distinction here pointed out between the rules which apply where the question is, what discovery shall be demanded from a *defendant*, and the maxims which govern in those other cases where the court has to decide how far testimony may be required from a *witness*. In other words, the privilege of a party is *one* thing; the privilege of a witness is another, and, it may be, a very different thing. The best public consequences result from compelling an unreserved disclosure by defendants. And herein consists the triumph of the Court of Chancery over ordinary tribunals. But the Court of Chancery holds the same maxims as other courts as to the privilege of witnesses. Where the question is, how far shall a witness be restrained by professional confidence from giving testimony, the rules, we apprehend, are the same at law and in equity.

At the same time it seems doubtful

whether, after all, the above distinctions are, except for purposes of definition, of any very material practical utility. For when the question is, *shall professional confidence be violated?* the answer can hardly be different whether the person examined be a party or a witness. The protection is always the client's. And whether an attorney; for example, would be restrained from divulging a confidential communication, the client himself, if examined as a defendant, could hardly be compelled to make disclosures, otherwise the privilege would be defeated and rendered nugatory.

## NEW STATUTES, EFFECTING ALTERATIONS IN THE LAW.

### HIGHWAY RATES.

9 & 10 VICT. c. 49.

An Act to continue until the 1st day of October 1847, and to the end of the then next Session of Parliament, an Act for authorizing the Application of Highway Rates to Turnpike Roads. [18th August, 1846.]

1. *Recited act continued until 1st October, 1847.*—Whereas an act was passed in the 4 & 5 Vict. c. 59, intituled "An Act to authorise for One Year, and until the End of the then next Session of Parliament, an Application of a Portion of the Highway Rates to Turnpike Roads in certain Cases," which act has been continued by sundry acts until the 1st day of October in the year 1846, and to the end of the then next session of parliament; and it is expedient that the same be further continued: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said act shall be continued until the 1st day of October in the year 1847, and to the end of the then next session of parliament.

2. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

### POOR RATE.

9 & 10 VICT. c. 50.

An Act to continue until the 1st day of October, 1847, and to the End of the then Session of Parliament, the Exemption of Inhabitants of Parishes, Townships, and Villages from Liability to be rated as such, in respect of Stock in Trade or other Property, to the relief of the poor. [18th August, 1846.]

1. *Recited act continued until 1st October, 1847.*—Whereas an act was passed in the 3 &

<sup>a</sup> *Flight v. Robinson*, 8 Beav. 22.

4 Vict. c. 89, intituled, "An act to exempt, until the 31st day of December, 1841, Inhabitants of Parishes, Townships, and Villages from Liability to be rated as such, in respect of Stock in Trade or other Property, to the Relief of the Poor." And whereas the said act hath been since continued by sundry acts until the 1st day of October in the year 1846, and, if parliament be then sitting, to the end of the then next session of parliament; and it is expedient that the said act be further continued: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that the first-mentioned act shall continue in force until the 1st day of October, 1847, and, if parliament be then sitting, to the end of the then session of parliament.

2. *Act may be amended, &c.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament.

#### TURNPIKE ACTS CONTINUANCE.

9 & 10 VICT. c. 51.

An Act to continue certain Turnpike Acts until the 1st day of October, 1847, and to the End of the then next Session of Parliament. [18th August, 1846.]

1. *Acts relating to Turnpike Roads continued until October 1, 1847.*—Whereas it is expedient that the several acts hereinafter specified should be continued for a limited time; be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that every act now in force for regulating, making, amending, or repairing any turnpike road in Great Britain which will expire on or before the end of the next session of Parliament shall be continued until the 1st day of October, 1847, and to the end of the then next session of parliament.

2. *Act may be amended, &c.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament.

#### LOAN SOCIETIES.

9 & 10 VICT. c. 52.

An Act to continue to the 1st day of October, 1847, and to the End of the then next Session of Parliament, the act to amend the Laws relating to Loan Societies. [18th August, 1846.]

1. *Recited act further continued to October 1, 1847.*—Whereas an Act was passed in the 3 & 4 Vict. c. 110, intituled "An Act to amend the Laws relating to Loan Societies," which act has been continued by sundry acts until the 1st day of October, 1846, and to the end of

the then next session of parliament, and it is expedient that the same should be further continued: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that the said act shall be further continued to the 1st day of October, 1847, and to the end of the then next session of parliament.

2. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

#### DUTIES ON BOOKS AND ENGRAVINGS.

9 & 10 VICT. c. 58.

An Act to amend an Act of the Seventh and Eighth Years of Her present Majesty, for reducing, under certain Circumstances, the Duties payable upon Books and Engravings. [18th August, 1846.]

1. *7 & 8 Vict. c. 73, recited act repealed.*—Whereas by an act passed in the session of parliament holden in the 7 & 8 Vict., c. 73, intituled, "An act to reduce, under certain circumstances, the duties payable upon books and engravings, it is enacted, that it shall be lawful for her Majesty, by order in council, to declare that books and engravings published in certain foreign countries shall be liable only to the duties set forth in the schedule to the said act annexed: And whereas a treaty has been concluded between her Majesty and the King of Prussia for the purpose of securing to the authors and publishers of the United Kingdom and of the dominions of Prussia respectively a reciprocal protection in their rights of property in their productions: And whereas by the said treaty it is agreed that books and engravings published in the dominions of Prussia shall, upon their importation into the United Kingdom, be subject to such duties only as are set forth in the said treaty: And whereas such duties do not in all respects correspond with the duties set forth in the said schedule to the said act hereinbefore referred to; and it is expedient that authority should be given to her Majesty to carry the provisions of the said treaty into effect, and to conclude similar treaties with other foreign powers: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that the said act hereinbefore referred to shall be repealed.

2. *Her Majesty may, by order in council, reduce duties on books and prints published in countries to which copyright is allowed.*—And be it enacted, That whenever her Majesty has, by virtue of any authority vested in her for that purpose, declared that the authors, inventors, designers, engravers, or makers of any books, prints, or other works of art first

published in any foreign country or countries shall have the privilege of copyright therein, it shall be lawful for her Majesty, if she think fit, from time to time, by any order in council, to declare that from and after a day to be named in such order, in lieu of the duties of customs from time to time payable on the importation into the United Kingdom of any of the classes of articles enumerated in the schedule to this act annexed, there shall be payable only such duties of customs as are set forth in the said schedule.

3. *Her Majesty may, by order in council, reduce duties on books, &c., of countries under treaty of reciprocity.*—And be it enacted, That if at the time of publication of any such order in council as aforesaid there be subsisting between her Majesty and any other foreign country any treaty or convention concluded before the date of the passing of this act, and directly or indirectly binding her Majesty, either conditionally or unconditionally, to admit books, prints, or drawings, published in and imported from such country into the United Kingdom, upon the same terms as those published in and imported from the most favoured nation, and if in the case of such treaty being conditional such country have fulfilled the conditions required in return for such privilege, it shall be lawful for her Majesty, if she think fit, from time to time, by any order in council, after reciting the date of such treaty, and if the same be conditional stating that such country has duly fulfilled the conditions required in return for the aforesaid privilege, and is entitled thereto, to declare that from and after a day to be named in such order, in lieu of the duties of customs from time to time payable on the importation into the United Kingdom of any of the classes of articles enumerated in the said schedule to this act annexed, there shall be payable only such duties of customs as are set forth in the said schedule.

4. *Her Majesty may, by order in council, reduce duties in favour of countries not under treaty.*—And be it enacted, That it shall be lawful for her Majesty, if she shall think proper, from time to time, by any order in council, to declare that such duties only shall be charged upon books, prints, or drawings published in and imported from any foreign country or countries to be named in such order as are set forth in the said schedule to this act annexed.

5. *Her Majesty may, by order in council, revoke previous orders.*—And be it enacted, That it shall be lawful for her Majesty, by any further order or orders in council, from time to time to revoke the whole or any part of any order or orders issued by her Majesty under the authority of this act.

6. *Orders to be published in the Gazette.*—And be it enacted, that every order in council issued under the authority of this act shall within fourteen days after the issuing thereof be twice published in the "*London Gazette*."

7. *And to be laid before parliament.*—And be it enacted, that a copy of every order in coun-

cil issued under the authority of this act shall be laid before both houses of parliament within six weeks after issuing the same, if parliament be then sitting, and if not then within six weeks after the commencement of the then next session of parliament.

8. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of parliament.

#### SCHEDULE TO WHICH THE FOREGOING ACT REFERS.

##### Books; videlicet,

Works originally produced in the United Kingdom, and republished	£	s.	d.
in the Country of export, the hundred weight	.	.	2 10 0
Works not originally produced in the United Kingdom, the hundred weight	.	.	0 15 0

##### Prints and Drawings (Plain or Coloured):

Single, each	.	.	0 0 0
Bound or sewn, the dozen	.	.	0 0 1

#### COPYHOLD COMMISSION.

9 & 10 VICT. c. 53.

An Act to continue the Copyhold Commission until the Thirty-first day of July, One thousand eight hundred and forty-seven, and to the End of the then next Session of Parliament. [18th August, 1846.]

1. 4 & 5 Vict. c. 35.—6 & 7 Vict. c. 23.—7 & 8 Vict. c. 55.—*Copyhold Commission continued till 31st July, 1847.*—Whereas by an act passed in the fifth year of the reign of her Majesty, intituled "An Act for the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary Tenure, and in respect of other Lands subject to such Rights, and for facilitating the Enfranchisement of such Lands, and for the Improvement of such Tenure," it was, amongst other things, enacted, that no commissioner or assistant commissioner, secretary, assistant secretary, or other officer or person appointed under the said act, should hold his office for a longer period than five years next after the day of the passing of the said act, and thenceforth until the end of the then next session of parliament: And whereas the said act was amended and explained by an act passed in the seventh year of the reign of her Majesty, and by an act passed in the eighth year of the reign of her Majesty: And whereas it is expedient that the said commission should be further continued: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That so much of the first-recited act as is hereinbefore recited shall be repealed, and that no commissioner or assistant commissioner, secretary, assistant secre-

tary, or other officer or person so to be appointed, shall hold his office for a longer period than until the thirty-first day of July, in the year one thousand eight hundred and forty-seven, and to the end of the then next session of parliament.

2. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

#### COURT OF COMMON PLEAS.

9 & 10 VICT. c. 54.

An Act to extend to all Barristers practising in the Superior Courts at Westminster the privileges of Serjeants-at-Law in the Court of Common Pleas. [18th August, 1846.]

*Barristers-at-law to have and exercise equal rights and privileges in the Court of Common Pleas as serjeants-at-law.*—Whereas it would tend to the more equal distribution and to the consequent despatch of business in the Superior Courts of Common Law at Westminster, and would at the same time be greatly for the benefit of the public, if the right of the barristers-at-law to practise, plead, and to be heard, extended equally to all the said courts; but, by reason of the exclusive privilege of serjeants-at-law to practise, plead, and have audience in the Court of Common Pleas at Westminster during term time, such object cannot be effected without the authority of parliament: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act all barristers-at-law, according to their respective rank and seniority, shall and may have and exercise equal rights and privilege of practising, pleading, and audience in the said Court of Common Pleas at Westminster with the said serjeants-at-law; and it shall be lawful for the justices of the said court, or any three of them, of whom the Lord Chief Justice of the said court shall be one, to make rules and orders, and to do all other things necessary for giving effect to this enactment.

#### ABOLISHING DEODANDS.

9 & 10 VICT. c. 62.

An Act to abolish Deodands. [18th Aug. 1846.]

1. *Deodands and forfeiture of chattels moving to or causing death abolished from and after 1 Sept. 1846.*—Whereas the law respecting the forfeiture of chattels which have moved to or caused the death of man, and respecting deodands, is unreasonable and inconvenient: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after

the first day of September, one thousand eight hundred and forty six, there shall be no forfeiture of any chattel for or in respect of the same having moved to or caused the death of man; and no coroner's jury sworn to inquire, upon the sight of any dead body, how the deceased came by his death, shall find any forfeiture of any chattel which may have moved to or caused the death of the deceased, or any deodand whatsoever; and it shall not be necessary in any indictment or inquisition for homicide to allege the value of the instrument which caused the death of the deceased, or to allege that the same was of no value.

#### NOTICES OF NEW BOOKS.

*A Digest of the Examination Questions in Common Law, Conveyancing, Equity, Bankruptcy, and Criminal Law, from the commencement of the Examination in Trinity Term, 1836, to Trinity Term, 1845, inclusive.* Second Edition. By ROBERT MAUGHAM, Secretary to the Incorporated Law Society of the United Kingdom and to the Board of Examiners. London: E. Spettigue. Pp. 257.

MANY of the younger class of our readers have commenced their preparations for the examination which will take place in the next term; and others will soon commence those preparations for the next year. We therefore deem it appropriate to call attention to this digest of the questions. Mr. Maugham, the compiler, states that—

“It is now upwards of nine years since the rules came into operation for examining into the qualification of candidates for admission on the roll of attorneys and solicitors; and consequently all who are serving under the provisions of the statute have entered the profession ‘affected with notice’ of the ordeal through which they have to pass.

“It has been supposed, that the examination has thrown additional duties and obligations on the practitioner in regard to the instruction of his articulated clerks. His primary duty, however, consists in devoting the best powers of his mind to the interests of his clients. It is for them he is authorized to practise. They have the first claim; but, next to them, he is bound, in the language of his contract, “by the best ways and means in his power, and to the utmost of his skill and knowledge, to teach and instruct his clerk in the practice or profession of an attorney and solicitor.”

“Whatever may be the duty of the *Instructor*, it is clearly the interest of the *Learner*, that the information he receives should be communicated in the course of real business, in the actual conduct of actions and suits, and the ‘pro-

gress of other legal affairs. The knowledge thus acquired will never be effaced. During the usual hours of an attorney's office, the clerk should therefore be actively employed in his professional duties, and seize every opportunity of ascertaining from the proper books, not only the best way of taking any legal step, but the reason for its adoption.

"It has been my object, (as part of a series which I have submitted to the profession) to place myself in the position of a solicitor, anxious to discharge his duty, as well to his clients as to his articulated clerks, and to consider the best means of performing that duty in regard to the studies of the latter. It is manifest, that a solicitor can rarely possess leisure to frame a collection of questions for the purpose of drawing forth the legal knowledge of his clerk in all the branches of law and practice. But with a proper book of questions, it is comparatively easy to select a certain portion which may be deemed fit for a given exercise, and which the clerk may answer from recollection in his master's presence.

"The utility of this method of instruction is obvious. It is the practice, in almost all the sciences, to test the progress of the student by well-framed questions, and it is singular that the plan has been but sparingly adopted in the study of the English law;—a study, however, to which the *catechising* process is peculiarly suited. The main business of the client with the solicitor is to ask questions, and receive answers, on points of law and practice; and the communications between the solicitor and his counsel approach still nearer to the form of interrogatory and examination. The practice now recommended seems therefore a fit preparation, as well for the aid of the student, as for the business of the young practitioner.

"Since the examination was instituted, nearly three thousand questions have been propounded as tests for ascertaining, according to the language of the statute, "the fitness and capacity" of the persons applying for admission. Many inquiries have been made from time to time regarding the mode, the nature, and extent of the examination, and it appears now to be a convenient season for classifying the questions under their appropriate heads, whereby the student may be enabled to go through a regular course of reading.

"The present volume, therefore, contains a digest of all these questions, omitting only such as have been repeated, in the same form, at different examinations. They have been arranged in such order as appeared most likely to facilitate the course of reading of the student, according to the method usually adopted in the standard treatises on law and practice.

"Thus, in the *Common Law*, the questions have been subdivided into the rights and forms of action, process, appearance, pleadings, evidence, trial, judgment, execution, interlocutory proceedings, costs, &c.

"In *Conveyancing*: the nature of estates, property—real and personal, title, conveyances, mortgages, leases, wills, intestacies, trusts, vendors and purchasers, &c.

"In *Equity*: its general nature, jurisdiction of the court, specific performance of contracts, frauds, administration of assets, foreclosure, legacies, discovery,—bills, answers, demurrers, times of proceeding, hearing, appeals, &c.

"In *Bankruptcy*: the jurisdiction of the court, the fiat, the petitioning creditor's debt, the trading, &c., proof of debts, property passing by the fiat, bankrupt's certificate, &c.

"In *Criminal Law*: jurisdiction of the courts, nature of offences, homicide, burglary, larceny, &c., evidence, trial, punishment, keeping the peace, parochial settlements, &c.

"The student will thus be enabled, after reading one of the series of questions, to apply himself to some approved treatise on the subject, which he will be stimulated to read with attention and advantage:—just as the practitioner, who has to consult a report or a text book, steadily retains in his memory the information he seeks for his client's case.

"After the student has read so much as relates to the questions in hand, he should close the treatise, and sit down and answer the questions. Having well considered his task and done his best, he should then test his success by reference to the book he has studied.

"Thus, stimulated by a method which supplies an object and motive of industry and attention, the student will find the result impressed on his mind with a permanency which no other course of study can effect.

"It may be proper to state, that some of the questions which were put at the examination have been omitted in this Digest. A few of these consisted of questions on points of law or practice which, in consequence of new statutes or rules of court, have become obsolete. Several questions, in consequence of their importance, have been repeated in substance at different examinations; and in such instances, the most comprehensive form of the question has been selected, and, in some instances, questions have been retained, bearing on the same point or principle, but varying in form, and thus impressing the memory by divers modes of inquiry.

"It should also be noticed, that where a question involved more than one distinct point, it has been thought advisable, occasionally, to subdivide it, in order that the student may more clearly distinguish its import."

To these remarks which are submitted in reference to the volume before us, Mr. Maughan adds the following statement regarding his other volumes which are designed peculiarly for the use of students:—

"Soon after the commencement of the examination of candidates for admission on the roll of attorneys and solicitors, I had frequent opportunities of knowing that a *short course of reading* was needed for those who had little leisure for study, and perhaps not much inclination, yet were bound to prepare for the ordeal through which they must pass. Aware

that the practitioner, engaged throughout the day in active business, and often occupied during the silent watches of the night in preparing for the morrow, could rarely superintend the studies of his pupil, I considered how best the duty of the instructor and the labour of the learner might be facilitated.

"Without entering the field of rivalry amongst writers, who have applied their minds to the minute and elaborate exposition of large and important branches of the law, it appeared to me that I might, without presumption, undertake the task of supplying a *general outline* of the principal departments indicated by the course taken in the examination into *common law*,—*conveyancing*,—*equity*,—*bankruptcy*,—and *criminal law*.

"The duties of a compiler of this humble order, seemed to demand only, that he should be well acquainted with the wants of his readers, and spare no pains in collecting and arranging his materials.

"Accordingly, I have submitted to the profession a short series of volumes, intended as the *first books* for the law student, compiled from the works of Blackstone and other text writers, omitting the obsolete or repealed parts of the law, and incorporating the recent statutes and decisions down to the time of publication.

"The volumes thus compiled are,—

"1st. Outlines of law, comprising all the various injuries to persons and property, and their remedies in the several courts. Part I.—Common and Statute Law. Part II.—Equity and Bankruptcy.

"2d. Outlines of the Law of real Property. Part I.—Corporeal and Incorporeal Hereditaments; Tenures; Estates; Uses and Trusts. Part II.—Title by descent and purchase, and the several modes of conveyance.

"3d. Outlines of Criminal Law.

"4th. Outlines of the Jurisdiction of all the Courts, Civil and Criminal.

"5th. A Digest of the Examination Questions in Common Law, Conveyancing, Equity, Bankruptcy, and Criminal Law.

"In executing this design, it was manifest that so far as the Commentaries of Mr. Justice Blackstone contained an exposition of the *existing* law, it was impossible to follow a better guide, either for clearness of statement, or elegance of diction. To that time-honoured work I have therefore freely resorted, treasuring up not only all such parts as continued unchanged at the present day, but so much of the history of the *past* as sheds a useful light on the *present*.

"Whilst the masterly sketch of the law relating to 'Private Wrongs,' contained in the third volume of the Commentaries, stands altogether unrivalled, (except in its obsolete description of almost all real actions,) it must be admitted that the student will seek in vain for any adequate statement of the relief and protection afforded in courts of *equity*, extending at this moment over one hundred millions of property. Nine-tenths of the volume on Pri-

vate Wrongs are devoted to the common law remedies, and only one to equity and bankruptcy. I have therefore had recourse to other text writers, to the reports of adjudged cases, and to the recent statutes.

"The reader need not be reminded of the difficulty of condensing the principal points arising from the vast mass of legislative and judicial changes which have occurred since the time of Blackstone; and of selecting just so much as might be properly suited to the elementary nature of the design, yet sufficient to satisfy at his outset the intelligent student. I have earnestly endeavoured to render the work useful, to submit to the reader not only all the *alterations* in the text, falling within the plan of an elementary course of reading, but to supply various important *additions* not hitherto comprehended in any edition of Blackstone."

## LEADING CASES IN CONVEYANCING.

### No. III.

ROE *dem.* WILKINSON *v.* TRANMARR.

Hilary Term, 31 Geo. 2, 1758.

IN THE COMMON PLEAS.

Willes, 682.

S. C. 2 Wils. 75.

*Where it was held that a deed could not operate as a release, because it attempted to convey a freehold in futuro, but that it was good as a covenant to stand seised.*

A SPECIAL case was reserved on the trial of this ejectment at the assizes at York. By deeds of lease and release, dated the 9th and 10th of Nov., 1733, Thomas Kirkby, in consideration of natural love to his brother Christopher Kirkby, and of 100*l.*, granted, released and confirmed to Christopher Kirkby, the premises in question after the death of Thomas Kirkby, to hold to the said Christopher Kirkby, and the heirs of his body, and after their decease, to John Wilkinson, (the lessor of the plaintiff,) eldest son of his (the grantor's) well beloved uncle John Wilkinson, and his heirs and assigns, and to the only proper use of the said J. Wilkinson the younger, his executors, administrators, or assigns, for ever, he the said J. Wilkinson the younger paying to the child or children of his (the grantor's) brother, Stephen Kirkby, 200*l.*, (and for want of such children to other nephews and nieces therein mentioned); and for want of such children, the estate was to be free from the payment of the sum of 200*l.* The release contained covenants from the grantor that he was seised in fee of the premises in question; and that it should be lawful for Christopher Kirkby or J. Wilkinson the younger, after his (the grantor's) death, peaceably and quietly to hold, &c. And it was thereby covenanted, granted, and agreed, by and between the said parties, that all fines, recoveries, and other assurances of the said premises already levied, suffered and executed by and between the said parties should enure to

and for the only use and behoof of Christopher Kirkby, and the heirs of his body, and for want of such issue to the proper use and behoof of John Wilkinson the younger, his heirs and assigns for ever, according to the true intent and meaning of those presents. At the time of executing the deeds Christopher Kirkby paid 20*l.*, part of the consideration, in money, and gave his note for the remainder, and a receipt was signed by T. Kirkby for the whole sum. Thomas Kirkby continued seised of the premises in question until his death in 1744. Christopher Wilkinson died in the year 1740, without issue. J. Wilkinson, the lessor of the plaintiff, had no notice of the deeds of lease and release until a short time before the ejectment was brought.

The case was argued on the 9th of February, 1756, by *Willes*, Sergeant, for the plaintiff, and *Poole*, Sergeant, for the defendant; a second time on the 25th of June, 1756, by *Hewitt*, Sergeant, for the former, and *Prime*, Sergeant, for the latter; and again a third time on the 23rd of June, 1757, by *Hewitt*, Sergeant, and *Prime*, Sergeant; and

*Willes*, Lord Chief Justice, now delivered the opinion of the court as follows, first stating the case:—

“It is admitted that this deed will not operate as a release, because it grants a freehold *in futuro*, which cannot be done. The only question therefore is, whether, in respect to John Wilkinson, the lessor of the plaintiff, it can operate as a covenant to stand seised? If it can, he ought to recover in this suit; if it cannot, judgment must be for the defendants.

“A great many cases were cited in the argument of this cause, and to be sure there are a great number of cases not quite consistent with one another upon this question,—what shall amount to a covenant to stand seised. But, as I think that this case rather depends upon the general reason of the law, and some particular rules that have been laid down in respect to covenants to stand seised, I shall not go through all the cases that have been cited, but shall only mention some few of them as authorities in point for the opinion which I am going to give, and two or three that were cited on the other side, to show that the judgment which we are going to give does not clash with any of them.

“And we are all of opinion, (for my brother *Bathurst*, though absent, has given me leave to say, that he is of the same opinion with us,) that this deed of release may operate as a covenant to stand seised.

“And first, we found our opinion on the general rules of law in respect to the exposition of deeds, which are laid down in many of the books, and which are collected out of them by *Shepherd on Common Assurances*, p. 82 and 83, in which he says, that *benigné faciendæ sunt interpretationes chartarum ut res magis valeat quam pereat*; and that, *verba intentioni et non e contrâ, debent inservire*. And therefore, (he says,) that deeds which are intended and made to operate one way may operate another way, if the intention of the parties cannot take place

unless they operate a different way from what they were intended; and he puts these instances, (amongst others,) that a deed intended for a release, if it cannot operate as such, may amount to a grant of a reversion, an attornment, or a surrender, and so *é converso*. And that if a man make a feoffment in fee with a letter of attorney to give livery, and no livery is given, but there is, in the same deed, a covenant to stand seised to the uses of the feoffment; if this be in such a case where there is a consideration sufficient to raise the uses of the covenant, it will amount to a covenant to stand seised. In the case of *Crossing v. Scudamore*,<sup>a</sup> which I shall mention more particularly by and by, Lord Chief Justice Hale cites the opinion of Lord Hobart, in fo. 277, and declares himself to be of the same opinion, that the judges ought to be curious and subtle, (Lord Hobart used the word *astuti*,) to invent reasons and means to make acts effectual according to the just intent of the parties. And it is said in the case of *Osman v. Sheafe*,<sup>b</sup> which I shall have occasion likewise to mention again presently, that the judges in those later times (and I think very rightly) have gone farther than formerly, and have had more consideration for the substance, to wit, the passing of the estate according to the intent of the parties, than the shadow, to wit, the manner of passing it. These are the general reasons that we go on; and we think that all the particular rules that have been laid down in respect to covenants to stand seised all concur in the present case: I I know of no other but these:—

“1st. That there must be a deed.

“2nd. That there be words sufficient to make a covenant.

“3rd. That the grantor or covenantor must be actually seised at the time of the grant.

“4th. That the intent of the grantor must be plain.

“5th. That there be a proper consideration to raise the use.

“First, This is certainly a deed; and though it cannot operate as a release, it being signed, sealed, and delivered by the party, does not cease to be a deed.

“Secondly, That there are sufficient words to make a covenant I shall show more particularly by and by; but if there were no other word but the word grant, that would be sufficient according to all the cases.

“Thirdly, It is admitted, and so stated in the case, that the grantor, Thomas Kirkby, was actually seised at the time of the grant.

“Fourthly, Nothing can be more plain than that the grantor intended that the lessor of the plaintiff should have the estate after the death of Christopher Kirkby without issue: it is said so in express words in three places in the deed; what estate he was to take is not material at present, he being still living.

“Fifthly, Here is a plain consideration as to Wilkinson, the lessor of the plaintiff; he is

<sup>a</sup> 2 Lev. 9; 1 Ventr. 137; 1 Mod. 175.

<sup>b</sup> 3 Lev. 370; Carth. 307.

called in the deed eldest son of his well-beloved uncle John Wilkinson. If it were not so said in the deed, his relation to the grantor might be averred and proved, according to the case of *Goodtitle v. Pette*, 2 Str. 935, and several cases that are there cited<sup>a</sup> out of Lord Coke's Report.

"Having mentioned the general reasons and likewise the particular rules on which we found our opinion, I shall now mention some few cases which I think are authorities in point. I shall not take notice of the ancient cases, because of late the courts of law have gone much farther in the determination of this question, and likewise because there are several rules laid down in these ancient cases which are not now adhered to. But I shall begin with the case of *Crossing v. Scudamore*, Tr. 23, Car. 2, in B. R., and 26 Car. 2, in Cam. Scarr., reported in 1 Mod. 175, 2 Lev. 9, and 1 Ventr. 137; *Coulthman v. Senhouse*, E. 30 Car. 2 B. R., Sir T. Ion. 105; *Walker v. Hall*, 29 Car. 2, in Scarr., 2 Lev. 213; *Harrison v. Austin*, Tr. 3, J. 2, B. R. Carth. 38, 9; *Baker v. Lade*, B. C. H., 2 W. & M. 3 Lev. 291; and *Osman v. Sheafe*, 3 Lev. 370, 5 W. & M., B. C. [His Lordship here stated and commented<sup>d</sup> upon these cases.] These are all the authorities that I shall mention for the opinion that I am going to give, and I think that these are sufficient.

"But before I give the judgment of the court, I shall take notice of some objections that were made on the part of the defendants, and two or three cases that were cited to support them.

"1st. It was objected that the lessor was no party to the deed; but to be sure, this is no objection. It is not necessary that a person taking under a deed should be a party; remainders are most commonly limited to persons who are not parties, and especially in covenants to stand seised.

"2ndly. That there was no consideration as to Wilkinson; but this I have answered already.

"3rdly. That it was intended to be a deed at common law, and therefore cannot operate by the statute of uses. This is founded on the dictum in Co. Lit. 49, 'Where a man hath two ways to pass lands, and both be by the common law, and he intendeth to pass them by one of the ways, yet *ut res magis valeat* it shall pass by the other. But where a man may pass lands either by the common law or by raising of an use and settling it by the statute, there in many cases it is otherwise.' But that rule has not been observed for above a hundred years last past; and most of the cases cited are determined contrary to that rule. Nor does Lord Coke lay it down as a general rule, but he only says that it is so in many cases. And Shepherd, in his Book of Common Assurances, which I have already mentioned, who has verbatim transcribed the words of Lord Coke, puts a case, which I have already mentioned, directly contrary to this rule.

"4thly. The next objection was, that the deed was void, and cannot operate at all. If by this be meant void as such a deed which it was intended to be, all the cases are against the objection. If it were meant a void deed, this, as I have already shown, is not so, it having been duly executed by the grantor.

"5thly. But the main objection, and which the cases (of which I shall take notice) were cited to support, was that no estate passed by this deed to Christopher Kirkby, out of whose estate the other estates are to arise; and it is admitted that he can take no estate by this deed. To support this objection were cited, *Atwaters v. Birt*, 43 Eliz. B. C., Cro. Eliz. 856; *Hore v. Dix*, H. 12, Car. 2, B. C. 1, Sid. 25; *Samon v. Jones*, 2 Ventr. 318. If this objection had not been so solemnly determined in these cases to be a good one, I own I should have been of another opinion; because in a covenant to stand seised the estate properly arises out of the estate of the grantor, and his intent that it should not (I think) signifies nothing. For though his intent is to be regarded what estate is to pass, and to whom, I do not think it is all to be regarded as to the manner of passing it, (of which he is supposed to be ignorant;) if it were, it would overturn almost all the cases. But I choose rather than contradict such great authorities, to distinguish the present case from them, and I think it is plainly distinguishable; for in the present case the estate to Wilkinson could not be to arise out of the estate of Christopher Kirkby; 1st, because he was intended only to have an estate for life, or at most an estate tail; and 2ndly, because the lessor's estate is not to commence until after the estate granted to Wilkinson. [qu. C. Kirkby.] There is likewise one thing in the present case much stronger than in any of the cases that have been cited on the one side or the other; for here is not only the word grant, which has been often construed as a word of covenant, but likewise the grantor expressly covenants in two places in the deed that the estate shall go to John Wilkinson in such manner as he has granted it. For these reasons we are all of opinion that this deed will amount to a covenant by the grantor to stand seised to the use of J. Wilkinson, and that therefore he ought to have the benefit of the verdict, and may enter up judgment upon it.

The following cases further illustrate the construction of deeds:

A testator having devised all the residue of his real and personal estate to trustees upon trust within six months after his decease, to raise 34,000*l.*; and having out of this sum made a provision for the maintenance of his two daughters, E. and S., during their minorities, directed, that a moiety of the interest arising from it should be paid to each daughter, on her attaining the age of 21, or marrying, for her separate use, during a term of 99 years, if she so long lived; and that in case either of them died, leaving no child or issue of a child, the whole of the interest should be paid to the

<sup>a</sup> *Filmer v. Gott*, 7 Bro. Parl. Cas. 70; and *R. v. Inhabitants of Scammonden*, 3 D. & E. 474.

<sup>d</sup> *Vid. doe d. Milburn v. Salkeld*, Willes 677.



survivor for her separate use, during the remainder of the term, if she so long lived; and subject to these and some contingent gifts which never took effect, he bequeathed the 34,000*l.* to his trustees upon trust, after the decease of his daughters, for such person or persons as should, under the subsequent limitations, be entitled to the residue of his real and personal estate. In these subsequent limitations the trustees were directed, upon each of his daughters attaining 21, or marrying, to yield up to her a moiety of the residue of his real and personal estates, to hold the same to her and the heirs of her body, with remainder to the other daughter and the heirs of her body, remainder to his own right heirs. In a suit, instituted on behalf of the infant daughters for the administration of the testator's estate, a decree was made for raising the 34,000*l.*; and, the personal estate proving insufficient, part of it was raised by the sale of portions of the real estate. Afterwards *S.*, with the concurrence of the heir of the surviving trustee, suffered a recovery of her moiety of the lands to the use of herself in fee; the tenant to the precipe being made, and the uses of the recovery, declared by a bargain and sale, in which both *S.* and the heir of the surviving trustee were conveying parties, but which was not enrolled within due time. At a subsequent period, *E.* suffered a recovery of her moiety of the lands. *S.* died, leaving children, having received out of court the moiety of the principal of that part of the charge which had been raised, but without having taken any steps to have the remainder of it raised.

*Semble*, that *E.* and *S.* did not take quasi estates tail in the sum of 34,000*l.*

*Held*, that if *E.* and *S.* took quasi estates tail in the 34,000*l.*, so as to be entitled to it absolutely, yet, under the circumstances of the case, the unraised portion of *S.*'s moiety of the charge was extinguished, and the unsold estates entirely exonerated.

That an equitable recovery is valid, though the tenant to the precipe is made by a bargain and sale not enrolled within due time.

Effect, as to the extinguishment of a charge, of the conduct of parties who are interested both in the money, and in the lands out of which the money is to be raised. *Smith v. Frederick*, 1 Russell, 174, July 19, 20, 21, 1825; August 3, 1826.

*L.*, being seised in fee, demised to *B.* for 21 years from June, 1814, *B.* demised to *M.* for 21 years from June, 1814, wanting 21 days; and then by deed poll granted to *L.* the indenture of lease to *M.* the premises thereby granted, and the rent reserved to hold to *L.*, his executors, &c., for the term mentioned in the demise to *M.*; *L.*, by lease and release, conveyed the premises, the reversion and reversions, rents, issues, and profits, and all his interest in fee to plaintiff by way of mortgage; *M.* assigned his term to defendants by way of mortgage, but defendants never entered.

*Held*, 1. That plaintiff might sue defendants on the covenants in *M.*'s lease.

2. That the deed poll from *B.* to *L.* did not

merge the chattel interest in the fee, or suspend the right to sue on the lease to *M.*

3. That the conveyance in fee from *L.* to plaintiff passed the chattel interest created by *B.* as well as the fee, and that it was well described in the declaration as an assignment of the chattel interest. *Burton v. Barclay*, 7 Bing. 745, June 13, 1831.

Defendant made cognizance in replevin, under a power of distress for an annuity granted by *G. T.* to *H.*, in September, 1806. Plaintiff pleaded that in May, 1806, *G. T.*, for securing another annuity, and in consideration of 3,000*l.*, granted, bargained, sold, and demised the premises in which, &c., to *F.* for 99 years: *Held*, no bar, without alleging entry by *F.*, or that *F.* elected that the deed should enure by way of bargain and sale. *Miller v. Green*, 8 Bing. 92, November 25, 1831.

One *A. D. L.*, being seised of a part of certain lands, and one *A. L.*, her daughter, seised of another part, executed a deed of settlement previous to the marriage of *A. L.*, the daughter, with *R. D.*, dated the 15th of November, 1822, by which, after reciting that *A. D. L.* and *A. L.* were respectively entitled to several parts of the premises, and that a marriage was intended to be had between *R. D.* and *A. L.*, it was witnessed that in consideration of 2*l.* to the said *A. D. L.*, paid by the said *R. D.*, and for and in consideration of the said intended marriage, and also in consideration of 10*s.* to each of them, the said *A. D. L.* and *A. L.*, by *L. L.* and *D. D.* in hand paid, they the said *A. D. L.* and *A. L.*, and each of them did grant, bargain, sell, alien, enfeoff, and confirm unto the said *L. L.* and *D. D.*, their heirs and assigns, (the premises in question,) to hold unto them the said *L. L.* and *D. D.*, their heirs and assigns, upon the trusts thereafter mentioned, viz., to the use of the said *R. D.* and his assigns for life, with divers remainders over. The indenture was duly executed by *A. D. L.*, *A. L.*, and *R. D.*, and the marriage took effect soon after the execution of the deed, and *R. D.* had possession of the premises up to the time of the trial in July 1836. The deed had indorsed upon it a memorandum of livery of seisin, but no names were subscribed to it, nor was any direct evidence given of livery of seisin having been made, nor was it shown that *L. L.* and *D. D.* (the trustees) were in any way related to the settlors. *A. D. L.* died in 1831, and *A. L.* in 1835.

*Held*, that this deed operated as a covenant to stand seised, and that a good use passed to *R. D.* the husband. *Doe d. Lewis Lewis v. Rers Davies*, 2 M. & W. 503. Easter Term, 1837.

See also as to the nature and operation of deeds, *Faussett v. Carpenter*, 5 Bligh, N. S. 76; S. C. 2 Dow. & Cl. 232; *Doe d. Were v. Cole*, 7 B. & C. 243; S. C. 1 Man. & R. 33; *Haggerston v. Hanbury*, 5 B. & C. 101; S. C. 7 D. & R. 723; *Barford v. Stuckey*, 3 B. & C. 308; S. C. 5 D. & R. 118; *Doe d. Hanley v. Wood*, 2 B. & Ald. 724. *Cartwright v. Amatt*, 2 Bos. & P. 43. *Roach v. Wadham*, 6 East 228. *Shove v. Pincke*, 5 T. R. 124.

# TITHE COMMISSIONERS' REPORT.

12th August, 1856.

SIR,—It is our duty to report to you the progress of the commutation of tithes in England and Wales, to the close of the year 1845.

We have received notices that voluntary proceedings have commenced in 9623 tithe districts; of these notices 29 were received during the year 1845.

We have received 7031 agreements, and confirmed 6704; of these 67 have been received and 88 confirmed during the year 1845.

5489 notices for making awards have been issued, of which 944 were issued during the year 1845.

We have received 3916 drafts of compulsory awards, and confirmed 3376; of these 592 have been received and 555 have been confirmed during the year 1845.

We have received 8995 apportionments and confirmed 8660; and of these 657 have been received and 741 confirmed during the year 1845.

In 10,080 tithe districts, as will be seen from the above statement, the rent-charges to be hereafter paid, have been finally established by confirmed agreements or confirmed awards.

We have in our possession agreements and drafts of awards as yet unconfirmed, which will include 867 additional tithe districts; and make a total, when completed, of 10,947 districts in which the tithes will have been commuted.

We have to repeat the assurance which we have happily been able to give in all our former reports, that the processes of commutation are going on, on the whole, tranquilly and satisfactorily.

We have adverted, in two former reports, to the state of the law under what is called Lord Tenterden's Act.

We have to express our deep regret that that law remains as uncertain as ever. While this uncertainty continues, it is impossible for us to adjudicate with any justice to the parties in very many cases which await our decision, and in which proceedings are necessarily suspended.

We have before explained the very serious delay which must result from postponing these cases.

All the alterations and fresh powers which we have ventured to suggest in our two last reports will be carried out, if a bill now before the legislature should receive the royal assent.

(Signed) WM. BLAMIRE,  
R. JONES.

To the Right Honourable  
Sir George Grey, Baronet,  
&c. &c. &c.  
Home Office.

# SELECTIONS FROM CORRESPONDENCE.

To the Editor of the Legal Observer.

## TREES ON COPYHOLD LAND.

SIR,—In reading your number of August 29, I have observed a letter from "Tyro," in which that learned gentleman has been endeavouring to challenge Mr. Joshua Williams. He states, that in reading his excellent work for the use of students in conveyancing, he has fallen into a quagmire, from which it would be a Samaritan act of charity to extricate him. Now, I should think that the generality of your readers would be very much disposed to follow in the footsteps of the Levite who passed by on the other side of the way and to take no heed of the distressed Tyro. But to the point.

He says that in Mr. Williams's work, in the chapter on copyholds, he meets with the following passage, or rather, to use his own words, he says:—"The author of the above-mentioned book, after informing his readers that the lord of the manor 'possesses a right to all mines and minerals under the lands, and also to all timber growing on the surface,' but that he 'cannot come upon the lands to open his mines or to cut his timber, without the copyholder's leave,' draws this strange conclusion:—'Hence it is that timber is so seldom to be seen upon lands subject to copyhold tenure.' Now, this does appear to me a most absurd *non sequitur*. Surely every one of common sense would come to the very opposite conclusion. For if the lord cannot cut down the timber and the copyhold tenant cannot cut down the timber, it would be natural to suppose that copyhold lands would be covered with trees rather than destitute of them."

In this, this gentleman appears wholly to have forgotten the very essence of copyhold lands, viz., that they are held by immemorial custom, which implies, of course, long duration of time. Now, if in olden times the copyholder could not cut the timber, nor the lord of the manor without his consent, and this rule continued in operation, neither would be likely to plant: there would therefore be a cessation of young trees springing up: consequently, in space of time, the British oaks which were standing in the merry days of old, (durable as they be, I admit,) would, *ex necessitate*, go to decay; and hence, as Mr. Williams very rightly observes, timber is very seldom seen on copyhold lands.

J. E., JR.

## LAW PROMOTIONS AND APPOINTMENTS.

MR. CROWDER, Q. C., has been appointed Recorder of Bristol, in the room of the late Sir Charles Wetherell.

## COPYHOLDS.

COPY of the FIFTH REPORT of the COPYHOLD COMMISSIONERS to HER MAJESTY'S PRINCIPAL SECRETARY of STATE for the HOME DEPARTMENT; pursuant to the Act 4 & 5 VICT. c. 35, s. 3.

*Copyhold Commission, 3rd August, 1846.*

SIR,—We have the honour of presenting to you our Fifth Report. The number of enfranchisements have again considerably increased.

For the details of the business done we beg to refer you to the list which is appended.

Some of the transactions in it are large and important.

Enfranchisements in manors held by ecclesiastics are still increasing, and in those manors there is a fair prospect of copyhold tenures being ultimately extinguished voluntarily.

COPYHOLD COMMISSION.—*Enfranchisements.*

Manor.	County.	Lord.	Nature of Copyholds.	Incidents of the Manor.
Ely, Barton.....	Cambridge	Bishop of Ely ..	{ Copyhds. of Inheritance }	{ Fines arbitrary and quit-rents .. }
Wisbech, Barton...	Ditto ..	Ditto ..	Ditto ..	Ditto ..
Milton Hall, other-wise Middleton Hall .....	Essex ..	{ Messrs. Boone and Scrutton .. }	Ditto ..	Ditto ..
Ditto .....	Ditto ..	Ditto ..	Ditto ..	Ditto ..
Ightenhill .....	Lancaster	Lord Montague ..	Ditto ..	{ Fines certain, and quit-rents .. }
Barnsbury .....	Middlesex	Henry Tufnell, Esquire	Ditto ..	{ Fines arbitrary, & quit-rents .. }
Cantlowes .....	Ditto ..	{ Prebendy of Cantlowes (with consent of Ecclesiastical Commissioners) }	Ditto ..	{ Fines certain, and quit-rents .. }
Ealing .....	Ditto ..	Bishop of London ..	Ditto ..	Ditto ..
Ditto .....	Ditto ..	Ditto ..	Ditto ..	Ditto ..
Friern Barnet .....	Ditto ..	{ Dean and Chapter of St. Paul's .. }	Ditto ..	{ Fines arbitrary, & quit-rents .. }
Fulham .....	Ditto ..	Bishop of London ..	Ditto ..	{ Fines certain, and quit-rents .. }
Ditto .....	Ditto ..	Ditto ..	Ditto ..	Ditto ..
Ditto .....	Ditto ..	Ditto ..	Ditto ..	Ditto ..
Ditto .....	Ditto ..	Ditto ..	Ditto ..	Ditto ..
Ditto .....	Ditto ..	Ditto ..	Ditto ..	Ditto ..
Hanwell .....	Ditto ..	Ditto ..	Ditto ..	{ Fines arbitrary, & quit-rents .. }
Isleworth, Rectory of	Ditto ..	{ Provost and Fellows of Eton College .. }	Ditto ..	{ Fines certain, and quit-rents .. }
Islington, Prebend of	Ditto ..	{ Prebendary of Islington .. }	Ditto ..	Ditto ..
Ditto .....	Ditto ..	Ditto ..	Ditto ..	Ditto ..
Knightbridge-cum-Westbourne Green .....	Ditto ..	{ Dean and Chapter of Westminster }	Ditto ..	{ Fines arbitrary, & quit-rents .. }
Headington .....	Oxford..	{ Rav. Thos. Henry Whorwood .. }	Ditto ..	{ Fines arbitrary, heriots, and quit-rents }
Ditto .....	Ditto ..	Ditto ..	Ditto ..	Ditto ..
Condover .....	Salop ..	{ Edward William Smythe Owen }	Ditto ..	{ Fines certain, heriots, & quit-rents }
Bleaddon with Priddy	Somerset	{ Dean and Chapter of Winchester .. }	{ Copyholds for 3 lives }	{ Fines arbitrary, heriots, and quit-rents }
Ditto .....	Ditto ..	Ditto ..	Ditto ..	Ditto ..
Ditto .....	Ditto ..	Ditto ..	Ditto ..	Ditto ..
Ditto .....	Ditto ..	Ditto ..	Ditto ..	Ditto ..
Barton-with-Bud-dlegate .....	Southampton	Ditto ..	Ditto ..	Ditto ..
Ditto .....	Ditto ..	Ditto ..	Ditto ..	Ditto ..
Ditto .....	Ditto ..	Ditto ..	Ditto ..	Ditto ..

*Fifth Report of the Copyhold Commissioners.*

In manors held by laymen the progress is slower. Termini of railroads, and the increase of population of the towns, lead to building speculations. Builders find that they can rarely with a copyhold title, and the number of enfranchisements from those causes will almost necessarily increase steadily.

We believe, however, that it would be a public benefit if the legislature were to sanction compulsory extinction of some of the copyhold incidents, more especially of heriots,

We have the honour to be,

Sir,

Your Faithful and Obedient Servants,

WM. BLAMIRE,

T. WENTWORTH BULLER.

RD. JONES.

*To the Right Hon. Sir G. Grey, Bart., M. P.*

*&c*

*&c.*

*&c.*

**COPYHOLD COMMISSION.—Enfranchisements.**

Terms for Enfranchisement,	Progress made in Enfranchisement.
Five years' annual value .. .. .	Signed and sealed.
Four years' annual value .. .. .	Ditto.
Six years' annual value .. .. .	Ditto.
Ditto .. .. .	Draft received.
{ The land enfranchised (being required for the site of a Parsonage, 5l. was taken for the consideration .. .. .	Signed and sealed.
{ One-sixth part of the value of the property was taken for the consideration, a private Act having been previously passed, reducing the fine on ground intended to be built upon to one-third of the annual value of the building erected .. .. .	Ditto.
{ The annual value of the land being very trifling, and the enfranchisement being effected for the purpose of widening a street 1l. was taken for the consideration .. .. .	Ditto.
One year's annual value; quit-rents 28 years .. .. .	Ditto.
One year's annual value; quit-rents 30 years .. .. .	Ditto.
Five years' annual value; quit-rents 30 years .. .. .	Ditto.
One year's annual value; quit-rents 28 years .. .. .	Ditto.
Ditto; ditto .. .. .	Ditto.
One year's annual value; quit-rents 30 years .. .. .	Draft received.
One year's annual value; quit-rents 34 years .. .. .	Ditto.
One year's annual value; quit-rents 28 years; freehold rent 30 years	Ditto.
Five years' annual value; quit-rents 28 years .. .. .	Signed and sealed.
.. .. .	Draft received.
{ One-twelfth of the land enfranchised, two years' annual value of the ground-rents on houses enfranchised; quit-rents twenty-five years .. .. .	Draft received.
{ .. .. .	Referred to the Master in Chancery to Report.
{ Land taken to complete a large building speculation, 150 years' purchase was given .. .. .	Signed and sealed.
.. .. .	Ditto.
.. .. .	{ Draft agreement, and schedule of apportionment received.
.. .. .	{
Fines 5 years' purchase. Heriots 25l. Quit rents 25 years. Farewell fee 5l. .. .. .	Signed and sealed.
Rent charge about one-sixth of annual value .. .. .	Ditto.
Rent charge about one-fifth of annual value .. .. .	Ditto.
Rent charge about one-seventh of annual value .. .. .	Ditto.
Rent charge about one-sixth of annual value .. .. .	Ditto.
Rent charge about one-fifth of annual value .. .. .	Ditto.
Ditto .. .. .	Ditto.
Four years' annual value .. .. .	Ditto.

Manor.	County.	Lord.	Nature of Copyholds.	Incidents of the Manor.
arton - with Bud- esgate .....	Southampton..	{ Dean and Chapter of Winchester .. }	{ Copyholds for 3 lives }	{ Fines arbitrary, he- riots, & quit-rents }
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
ransbury .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
hilbolton .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
ondall .....		Ditto .. ..	{ Copyhds. of Inheritance }	{ Fines certain, he- riots, & quit-rents }
itto .....	Ditto .. ..	Ditto .. ..	Ditto .. ..	Ditto .. ..
xton .....		{ Dean and Chapter of St. Paul's .. }	{ Copyholds for 3 lives }	{ Fines arbitrary, he- riots, & quit-rents }
lanydown .....		{ Dean and Chapter of Winchester .. }	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
Whitechurch .....	Ditto .. ..	Ditto .. ..	Ditto .. ..	Ditto .. ..
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itonston .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....	Ditto .. ..	Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
ash Biggotts and Pistries, otherwise Over Pastries....	Suffolk ..	Hon. Mrs. S. North ..	{ Copyhds. of Inheritance }	{ Fines arbitrary, & quit-rents .. }
arnes .....	Surrey ..	{ Dean and Chapter of St. Paul's .. }	Ditto .. ..	{ Fines arbitrary, he- riots, & quit-rents }
lyfleet .....		{ Edward Hughes Ball Hughes .. }	Ditto .. ..	{ Fines arbitrary, & quit-rents .. }
roydon .....		{ Archbishop of Can- terbury .. }	Ditto .. ..	{ Fines arbitrary, he- riots, & quit-rents }
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
psom .....		{ John Ivatt Briscoe and Anna Maria his wife. .. }	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
ambeth .....	Surrey ..	{ Archbishop of Can- terbury .. }	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
ighton .....		{ Fredck. Shakerley Kemp, Trustees of }	Ditto .. ..	{ Fines certain, he- riots & quit-rents }
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
glebird .....		The Earl of Thanet ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
itto .....		Ditto .. ..	Ditto .. ..	Ditto .. ..
eechingstoke.....	Wilts ..	{ Dean and Chapter of Winchester .. }	{ Copyholds for 3 lives }	{ Fines arbitrary, he- riots, & quit-rents }
igheldean .....		{ Bishop of Salisbury and Edward Dyke Poore, Esq., Lord Farmer .. }	Ditto .. ..	Ditto .. ..
Vroughton .....		{ Dean and Chapter of Winchester .. }	Ditto .. ..	Ditto .. ..

Terms for Enfranchisement.	Progress made in Enfranchisement.
Rent charge about one-fifth of annual value .. .. .	Signed and sealed.
Six years' annual value .. .. .	Ditto.
Five years' annual value .. .. .	Ditto.
Land at 5 years. Tenements at 2 years. Quit rents 30 years	Draft received.
Rent charge about one-third of annual value .. .. .	Ditto.
Rent charge about one-fourth of annual value .. .. .	Signed and sealed.
Ditto .. .. .	Ditto.
Rent charge about one-fifth of annual value .. .. .	Ditto.
Ditto .. .. .	Ditto.
One year's annual value; quit rents 28 years .. .. .	Ditto.
Ditto .. .. .	Ditto.
Rent charge about one-fourth of annual value .. .. .	Ditto.
Rent charge about one-fifth of annual value .. .. .	Ditto.
Ditto .. .. .	Ditto.
Ditto .. .. .	Ditto.
Rent charge about one-fourth of annual value .. .. .	Ditto.
Rent charge about one-fifth of annual value .. .. .	Ditto.
Rent charge about one-fourth of annual value .. .. .	Draft received.
Ditto .. .. .	Ditto.
Ditto .. .. .	Ditto.
One and a half year's annual value .. .. .	Ditto.
Rent charge about one-fourth of annual value .. .. .	Signed and sealed.
Ditto .. .. .	Ditto.
Rent charge about one-fifth of annual value .. .. .	Draft received.
Rent charge about one-fourth of annual value .. .. .	Ditto.
Four years' annual value .. .. .	Ditto.
Three and a-half years' annual value .. .. .	Signed and sealed.
Five years' annual value .. .. .	Ditto.
Rent charge about one-fourth of annual value .. .. .	Ditto.
Land at five years, tenement at two years' annual value ..	Draft received.
Rent charge about one-fourth annual value .. .. .	Ditto.
Five and a-half years' annual value, quit rents 28 years ..	Signed and sealed.
Five years' annual value, quit rents 28 years .. .. .	Ditto.
Five and a-half years' annual value .. .. .	Ditto.
{ Three and a-half years' annual value; heriots at 20l., and four he- }	Ditto.
{ riots at 10l. each; quit rent 28 years .. .. . }	
{ Three and a-half years' annual value; one heriot at 20l.; quit- }	Ditto.
{ rent 28 years .. .. . }	
{ Three and a-half years' annual value; one heriot at 20l.; quit- }	Ditto.
{ rents 28 years .. .. . }	
Six years' annual value .. .. .	Ditto.
Six and three-quarter years' annual value .. .. .	Ditto.
Five and a-half years' annual value .. .. .	Ditto.
Six years' annual value; quit rents 25 years .. .. .	Draft received.
Six years' annual value; quit rents 30 years .. .. .	Ditto.
{ Three and a-half years' annual value; composition for heriots 40l.; }	Signed and sealed.
{ quit rents 28 years .. .. . }	
Three and a-half years' annual value; composition for heriots 1l. 1s. ..	Ditto.
Three and a half years' annual value; 1 heriot at 20l.; quit rents 28 years	Ditto.
{ Four years' annual value of the ground-rents; two heriots at 30l.; }	Ditto.
{ quit-rents 28 years .. .. . }	
.. .. .	Ditto.
.. .. .	Ditto.
.. .. .	Ditto.
.. .. .	Draft received.
.. .. .	Ditto.
Rent charge about one-fifth of annual value .. .. .	Signed and sealed.
One-sixth part of the land to be enfranchised .. .. .	{ Draft agreement for enfranchisement received.
Rent charge about one-fifth of annual value .. .. .	Draft received.

## DEBATE ON THE SMALL DEBTS BILL,

## PATRONAGE.—JUDGES.—ATTORNEYS.

THE great importance of the Small Debts Act renders it desirable to give the substance of the principal debate, which took place on the 20th August, when

Lord G. Bentinck rose and said, that he thought it a bill of too much importance for them to go into committee upon it without hearing some further statement from the promoters of it. He was well aware that it originated with the late government; and that her Majesty's present ministers had only obtained the inheritance of a measure bestowing more patronage upon the government than any other measure which had for many years been introduced into parliament; but he thought that at this period of the session, when there were so few members left in the house, they were entitled to have a full and complete explanation of the extent to which the patronage bestowed went, and to hear the full extent of the expense which was to be brought upon the country by this measure. There was a power given in the second clause of the bill to her Majesty, with the advice of the privy council, to divide every county into as many districts as to her Majesty, with that advice, shall seem fit. Well, the house ought to know the aggregate number of districts into which all the counties of England were to be thus divided. As the bill stood at present, it appeared that each district was to have a separate judge, and each judge to have a salary of 1,200*l.* a year; the patronage of which judgeships was to be at the disposal of the Lord Chancellor of England. Each court was also to have a clerk, with a salary of 600*l.* a year. There were also to be treasurers appointed, the amount of whose salaries was not defined, that point being left to the discretion of the Commissioners of her Majesty's Treasury. He wished to know how many treasurers there were to be, and what was to be the amount of their salaries. It had been commonly supposed out of doors, that the number of districts, in all probability, would not be less than 100. He had learnt since he came into the house, from the hon. and learned gentleman the Solicitor-General for the Crown, that he estimated the numbers of courts would not exceed 65. Well, then, he would take 65 as the number of courts. Sixty-five judges, each with a salary of 1,200*l.* a year, would amount to no less than 78,000*l.* Sixty-five clerks to these same judges, at 600*l.* a year each, would amount to 39,000*l.* in addition to the sum he had just mentioned. The two sums together would amount to 117,000*l.* as the annual patronage which would be at the disposal of the minister of the Crown. This was exclusive of the salaries of the treasurers, to which there was no limit fixed. Then there were many officers who were paid by fees in addition to the salaries to which he had referred. Many of these fees would have to be paid to the prejudice of fees which at the present time went into the consolidated fund. It was one

of the provisions of the bill that the judges of these courts were to perform many of the duties belonging to the High Court of Chancery. For anything he could discover to the contrary, these judges would have the power of acting as Masters of Chancery and Masters in Lunacy also, and they were to be paid for their services by fees in addition to their salaries. These fees would be paid in diminution of those fees which now constituted the fee fund of the Court of Chancery, and which went to counterbalance the expense of the Court of Chancery. The house had a right to know the extent of that diminution. Then, again, there was compensation to be given to all the officers of all the courts who were to be superseded by the new courts which were to be instituted. There were at this moment, he believed, in England, 450 courts of different descriptions, all with their officers, and all of whom, for anything he knew, were to be superseded by the new courts to be appointed under the present bill. Then, if these 450 courts were to be abolished, and if all the officers of these courts who did not choose to take, or who had not given them the option of taking, office in the new courts were to be entitled to compensation at the discretion of her Majesty's Lords of the Treasury, he thought the house ought to hear from her Majesty's ministers what was likely to be the amount of the compensation, in order that members might have some small notion of what would be the expense of carrying this bill into effect. There were other matters in the bill—points of detail—which required amendment, but which were more fitted for consideration in committee; but at the same time he was bound to say that he did not think it was altogether a measure which would have the desired effect in bringing cheap justice to every man's door. His object in rising now was to endeavour to call forth from her Majesty's ministers a full and distinct declaration of the whole purport and extent to which the bill would go; and at the same time, he could not refrain from expressing his strong opinion that this was a measure of too great importance to be carried in the last week of the session; for, whether they looked to the large amount of patronage which it conferred upon government, or the great revolution which it intended to make in the jurisprudence of the country, it was a measure which ought to be discussed at an early period of the session, and when there was a majority of members of parliament present with all their energies fresh about them.

Sir G. Grey said, that when the bill was read a second time, he was prepared to enter at large into the general objects of the bill, and into the various details; but he had been rather checked by the house on the ground that the general objects and principles of the bill were not presented to the house for the first time—having undergone discussion for four or five previous sessions. The noble lord had said that the bill was an inheritance from the late government. He (Sir G. Grey) begged to correct that impression to this extent—that al-

though the bill had been left them by the late government, there had been several alterations made on it; some in its progress through the other house of parliament, and some by the present government, in deference to the opinion of certain parties, whose suggestions the government felt themselves justified in adopting, so far as they did not trench upon the general principle of the bill, or interfere with any important details. Still the principles and details were substantially the same as those of the bill which had been brought into parliament by the government with which he (Sir G. Grey) was connected in 1841, and which had been presented to parliament again in successive years during the existence of the late government. On one occasion, a committee, of which the late Secretary of the Home Department and himself were members, had sat upon this subject, and had very carefully considered all the details; and a bill was then only prevented from being brought in from the late period of the session at which the committee gave in their report. The present bill had also received very careful consideration, both from the government and from the country, it having been largely circulated in those districts which were likely to be most affected by it. Numerous suggestions had been communicated to the government in respect to the bill; but he must say that, so far as he was aware, not a single representation had been made to them in favour of the postponement of the bill; while there were many from parties who thought it would confer an important benefit on the country, and who earnestly pressed them to pass it into a law if possible this session. Petitions had been presented to the house to the same effect. When the present government came into office they considered this among the other measures which had been left them by their predecessors; and he confessed that his own impression at first was, that seeing the number of the clauses and the importance of the measure, it would be impossible to have it fully considered during the present session; but finding the strong opinion which had been expressed, both in and out of the house, in favour of proceeding with it, and having the best possible evidence that it was thoroughly known and understood, and that no one could be taken by surprise by it, he had yielded to the earnest representations which had been made to him on the subject, and therefore he now asked the house to go into committee on the bill. The noble lord should also remember that, during the present session, several local bills had been stopped on the distinct assurance that a general bill was to be brought in and carried, if possible, in the present session. As to the expense of these courts, it was quite impossible to say what would be the amount of charge which was to be made upon the Consolidated Fund; because it was proposed that moderate fees, regulated by a table in a schedule which was annexed, should be paid in all proceedings under the bill. He had no idea that the fees would be sufficient to defray the ex-

penses. There was a provision that after a time the Queen in council should have power to change payment by fees into payment by salary. In that event the fees would be paid into the Consolidated Fund. The whole amount of the expenses would depend upon the amount of the business in the courts; and it was only from experience of the mode in which it was proposed in the first instance to work the system, that the expense could be properly estimated. The noble lord assumed that each judge was to have 1,200*l.* a year, but this was a misapprehension. The districts under the bill might be of any extent; they were not necessarily coincident with counties. Middlesex and Lancashire might require to be each divided into several districts; for one judge could not possibly get through the whole business under this bill of either of those counties. But there were other parts of England where several counties might be included in one district. Full powers to consolidate such counties into districts where the business might be sufficient to occupy the whole time of one judge, were given under the bill.

The original proposal was, that the judges should be paid by salary. When the present government came to look into the measure they found it impossible to determine what number of judges would be required, and the proposal now was that the judges should receive fees in the first instance. If the amount was found to be excessive, the Secretary of State was empowered to fix another scale, and, ultimately, it was intended that payment by salary should be substituted for payment by fees. A *maximum* of salary was fixed, namely, 1,200*l.*, but it by no means followed, as the noble lord seemed to suppose, that all the judges would receive that amount. With regard to the patronage, that question had been very fully considered. If the dread of placing patronage into the hands of government were to be a bar to the progress of a measure admitted to be of great practical utility, it would deprive them of the advantages which attended the exercise of patronage under the control of public opinion by a responsible minister of the crown. Her Majesty's ministers were of opinion that, for the purpose of obtaining popular and efficient men to act as judges under the bill, the patronage should be placed in the hands of the Lord Chancellor, acting under his responsibility as a minister of the crown and subject to the control of public opinion. This conclusion was confirmed by a return in reference to the course of legislation on the subject of the small debts courts, now about to be superseded, showing that out of 42 such courts recently established, there were only two in which the patronage was not given to the Lord Chancellor. As to the judges in the existing courts, their claims to appointments under the present bill would, if they were properly qualified, be considered superior to those of others. In regard to questions of compensation, these were to be referred to the treasury, which would apply in the several cases the definite rules which had been established for its guidance in such cases.



Mr. M. Sutton observed, that the late government had hesitated as to giving so large an amount of patronage to ministers; and while he assented to the abstract principle that judicial appointments should be made by the crown, he thought it more expedient, when so many appointments were to be made at once, that a different course should be followed. The late government proposed to give the first nomination to the lord-lieutenants, reserving, however, to itself the power of filling up the subsequent vacancies. Again, by the bill of the late government, the judges of the existing courts were to be the first judges of the new courts. The Lord Chancellor or the Crown must always have power to displace judges who were disqualified; and there did not appear to be any reason for superseding the existing judges, as the present bill proposed. From the returns to which the right hon. gentleman (Sir G. Grey) had referred, it appeared that the great majority of the appointments under the local acts had been made by the Lord Chancellor. Why should these gentlemen not be retained? On the two points of patronage and compensation, he (Mr. M. Sutton) much preferred the bill of the late government, but, under all the circumstances, he should not feel himself justified in attempting to impede the progress of the measure.

The Attorney-General said, that the alteration by which the patronage was given to the Lord Chancellor had received the approbation of the hon. member for Cambridge, the late solicitor-general (Sir. Fitzroy Kelly). The bill of the late government proposed to give the patronage to the lord-lieutenant. There were at present about 80 judges of different local courts, which would be superseded. It was calculated that 60 or 65 courts would be an adequate number for the whole country; so that the bill of the late government recognised a vested right in some 80 persons to fill some 60 or 65 offices. It was after those 60 offices had been supplied by those 80 persons that the lord-lieutenants were empowered to fill up any vacancies that might still remain! It was better that the government should come forward and exercise the patronage in the first instance. Every one of the offices touched by this bill was constituted under local acts of parliament which contained a clause declaring that if a general act should be passed the rights created under those local acts should cease. But so far as parties were found qualified, the Lord Chancellor had stated that they should be considered as having a paramount claim; and it was supposed that the business before the new courts would be so large as to afford ample compensation for judges and clerks.

Mr. J. S. Wortley wished to ask why, if the Lord Chancellor intended to appoint those now in office to be judges in the new courts, a provision to that effect was not introduced into the bill? The late government had voluntarily deprived themselves of the patronage; and when so many of the appointments to the existing courts had been made by the Lord

Chancellor, or under special acts of parliament, the best course appeared to be to give the first appointments to those who had been nominated under such circumstances.

Mr. Romilly bore testimony to the importance of the bill. It was desirable to bring cheap justice to every man's door, and he thought district courts should be established throughout the country, to take cognizance of all matters which could affect the interests of the poor. He wished the government would take into consideration the propriety of extending the jurisdiction of the courts established by this bill to other matters, and of combining a variety of duties, ministerial as well as judicial, now performed by a number of different officers. He thought payment by salary preferable to payment by fees.

Mr. Henley considered the question of patronage involved in this bill as a very serious one. He was one of those who did not think that had the patronage been entrusted to the lord-lieutenants it would have been in good hands. But it was not quite clear that it was wise to place so large an amount of patronage at once in the hands of the crown. A very large proportion of the existing judges were attorneys, who if they retained their appointments must give up their practice. As they might be expected to prefer continuing their practice, a vast number of appointments would necessarily fall to the crown under the operation of the bill. He believed that if this bill were confined to its professed object—the recovery of small debts, without any reference to damages and wrongs—it might be a very beneficial measure.

The house then went into committee, Mr. Greene in the chair.

On clause 3,

Mr. J. S. Wortley suggested that some means should be taken for changing the districts of the judges who would be appointed under this bill, so as to prevent a judge from remaining for any long period in a particular locality.

On clause 9,

Mr. Newdegate observed that he understood from the statements which had been made by members of the government, that they were disposed to give legal gentlemen who filled existing judicial offices a preference in the appointments under this measure; and he wished to know whether there would be any objection to insert words in the bill for carrying out that object?

Sir G. Grey could not assent to the suggestion of the hon. member; but, without giving a pledge that existing officers would in all cases be appointed to judicial offices under this bill, he might state that a preference would be given to those existing officers who were considered competent for the situations.

Mr. Wakley wished to know why the appointments to judicial offices under this bill should be confined to one branch of the legal profession—why the judges should be selected from members of the bar only, to the exclusion of attorneys? It might not be very agreeable

to gentlemen at the bar to hear it said that attorneys were quite as competent as they were for these situations; but he considered it most unjust that gentlemen in that department of the profession should be debarred from these judicial appointments. The attorneys had just as much capacity, as much legal knowledge, and possessed as much love of justice as any gentlemen at the bar; and in his opinion, their exclusion from these offices was in principle most unjust, and in practice most injurious. If they left to the Lord Chancellor the discretion of appointing fit persons from the bar, why could not they also entrust him with the discretion of appointing fit persons from the attorneys? He considered that great injustice was done to a most respectable and honourable branch of the legal profession by excluding them from these appointments; and he would hereafter move an amendment which would have the effect of rendering them eligible for such offices.

The *Attorney-General* moved that after the words "barrister-at-law," the words "who shall be of seven years' standing or," be introduced.

Lord G. Somerset opposed the amendment, as he considered that the discretion of making these appointments ought to be entrusted to the Lord Chancellor, who would, no doubt, take care to appoint properly-qualified persons. With regard to the question raised by the hon. member for Finsbury, (Mr. Wakley), he certainly thought that that class of the legal profession commonly called solicitors were rather hardly used by this bill. This measure, he understood, contained a provision which rendered the present holders of judicial offices eligible for appointment as judges of county courts under this bill; but if any of the existing officers should cease to hold their appointments, they could not hereafter be succeeded by solicitors. He must say, that under these circumstances, he thought their fair share in these appointments was withheld from the attorneys. He saw no reason why eminent solicitors, who had acquitted themselves creditably in their profession, should not be eligible as judges of these courts, and he thought the appointments ought to be open to them. At the same time, he did not mean to assume that the education of a solicitor was generally such as to render him equally well fitted for judicial office with a barrister. He thought that all persons who now held judicial offices in courts of this kind had a strong claim upon the government for re-appointment under the present bill, unless some good reason to the contrary could be shown; and he understood that the right hon. Home Secretary concurred in this opinion.

Sir G. Grey said, that the words "barristers of seven years' standing," though they scarcely gave any adequate security for the appointment of efficient persons, still afforded some check, as they prevented the appointment of a man as judge to-day who had only been called to the bar yesterday. With regard to the fitness of

attorneys to occupy judicial situations in these courts, he was quite ready to admit that there were some most learned men in that branch of the profession who possessed very high qualifications for many important offices. But he wished it to be understood that no new provision had been introduced into this bill. Indeed, if the attorneys were treated with hardship by this bill, they were treated with equal hardship under a measure which had been introduced by the noble lord opposite (Lord G. Somerset). He could assure the house, that there was not the least intention to throw any slight upon the attorneys; but, if the argument of the hon. member for Finsbury were carried out, why should not attorneys be allowed to plead as advocates? and why should they not be eligible for seats on the bench in Westminster Hall? He (Sir G. Grey) considered that the best course was to adhere to the distinction which had been held between the two branches of the profession for a very long period; but he hoped it would not be supposed that there was any intention to slight that branch to which the hon. member for Finsbury had referred—the attorneys.

Mr. Bernal thought it advisable, if possible, to give some definition of what was meant by "practice."

Sir G. Grey considered it would be impossible to introduce any words that would effectually secure the object they all wished to accomplish, and thought the only course was to leave the matter to the discretion of the Lord Chancellor.

Mr. Henley thought it would be much better if there were no definition with respect to the judges in the bill, and that it should be left to the Lord Chancellor to appoint, on his responsibility, fit and proper persons. With respect to attorneys, they were either fit or unfit to be judges under this bill. Now there was a provision in the bill that all attorneys who were at present judges in certain named courts for the recovery of small debts might be judges under the present bill, and yet, in the same breath, the bill declared that all future attorneys should be disqualified. Both these arrangements could not be right, and, therefore, he should be better pleased to see it left entirely to the Lord Chancellor to appoint fit and proper persons as judges.

Colonel Sibthorp did not see why attorneys should be excluded from holding these judgeships.

The *Attorney-General* reminded the house that there was already a lucrative office under the bill appropriated exclusively to attorneys, viz., that of clerk to the judge. One reason for preferring barristers over attorneys as judges under this bill was, that their line of practice was better fitted for qualifying them as judges. The attorney directed his attention to details, and to the getting up of cases, while the barrister applied to those cases the general principles of law.

Mr. Escott said the real question was how

they could obtain the best men as judges under the bill, and, therefore, he thought it advisable that they should widen the field of selection as much as possible. He hoped the Government would reconsider their decision on this point.

In the course of some further conversation on the clause, it was suggested that the judges under the bill should be disqualified from sitting in parliament and from practising as barristers in the districts where they sat as judges.

Sir G. Grey said, that on the whole it had been thought not desirable to exclude these judges from practising as barristers entirely, but at the same time he conceived it to be desirable that, while allowed to practise in the superior courts, they should not practise in each other's courts.

Mr. Romilly was of opinion that the judges under this bill ought not to be allowed to practise at all as barristers. Concurrent practice as a barrister unfitted a man's mind for the judicial capacity. If these judges were allowed to practise as barristers, it might be possible for interested parties to obtain an opinion from one of them in his character of barrister having reference to a case which he would afterwards have to decide on as a judge. He would therefore make these judges judicial officers and nothing else: he would take up their whole time in that way, pay them handsomely and liberally, and thus the country would really get cheap and good justice brought home to everybody's door.

Mr. J. S. Wortley thought the Government was right in not proposing to exclude the judges under this bill from practising as barristers. How else could they hope to get good judges? Did they think a man fitted for the situation would abandon all the prospects of his profession for such a salary? He differed from the hon. and learned member, who thought concurrent practice as a barrister unfitted a man for a judge. He knew three gentlemen on the northern circuit eminent as barristers and distinguished as judges; and of these he might mention the Recorders of Hull and Leeds. The hon. and learned member had said that it might be possible to entrap a barrister in giving an opinion in reference to a case which he would afterwards have to decide on as a judge; but if he were a right sort of man, with a candid and strong mind, that circumstance would not prevent him from giving a proper decision on the case submitted to him as a judge. These courts would not take up all the time of their judges, and by attending Westminster Hall they would keep their wools polished.

Mr. Bernal reminded the house how strongly that was objected to in the case of the Welsh judges; he had known instances of cases submitted to them, with fictitious names, to obtain their opinion on points that would come before them judicially. Who would say that sixty or eighty judges could not be got, the salary being 1,200*l.* a year? Let the judges be neither members of parliament nor practising barristers.

Mr. W. Williams recollected that when the house was asked to give 1,800*l.* a year to the country commissioners of bankrupts, it was said this was necessary in order to get first-rate men; but he had the authority of well-informed barristers for stating that the practice of the gentlemen appointed did not average 300*l.* a year. In the case of the magistrates of the police courts, when their salary was raised, and barristers were appointed, there were three times as many applicants as vacancies, and applicants of great talent and eminent legal knowledge.

Mr. Escott urged that a judge ought at least not to act as a barrister in his district.

Lord J. Russell considered that there were two ways of obtaining good judges. One was by giving very considerable salaries, and, as in Westminster Hall, separating them altogether from practice at the bar, to be wholly devoted to judicial questions in every kind of form. There was another mode in regard to less important judicial functions and more limited spheres, namely, by appointing persons who at the same time practised at the bar. In justification of this latter course, the instance of Mr. Baines, the recorder of Leeds, and other cases, had been mentioned; in support of the contrary view no instances were given, but it was simply said that persons practising at the bar could not exercise judicial functions well. This last view, however, was not borne out by the fact; and every one must allow that the minds of such persons were likely to be constantly exercised, and to be in full vigour, upon legal questions. With regard to the plan of giving moderate salaries to persons to be placed in certain districts, to which they should be required to confine themselves, he (Lord J. Russell) thought that a mode which would fail of securing good judges. Those who did not very well succeed at the bar would be anxious to have these appointments, but men of talent, who knew they were likely to rise at the bar, would refuse them; and thus the country would be excluded from getting men of the best vigour of mind and the highest talent. No doubt there were men of good legal knowledge, who did not much practise at the bar, but the party who had this patronage would have great difficulty in saying who they were. When a man had risen to eminence at the bar, and had argued with ability, he had been subjected to a test, but in appointing these other persons there must be great uncertainty whether they were not men of very inferior talent. In Scotland the judicial decisions of local judges had never given satisfaction, and all difficult cases were sent to the superior judge, who was an advocate in the highest practice in the courts at Edinburgh; and by act of parliament the sheriffs were actually required to be habitually attending the court of session. Unless the house were disposed to go to a much greater expense than was contemplated, in prohibiting practice, they would be in danger of having men of very second-rate abilities and knowledge of

law, and who, in the course of a few years, would forget what they had known when practising. The objection, however, just made seemed valid, that a barrister ought not to practise in the district for which he was judge; and words should be proposed to obviate that.

Mr. Hume insisted that the arrangement in Scotland was the work of the lawyers against the wish of the people; the people wanted their judges to be resident among them, and not at Edinburgh. For 1,200*l.* a year ample talent might be obtained in the office in question; the person appointed ought to be a judge from first to last, and not half-barrister, half-judge.

Mr. Bernal suggested that the judges might be a species of justices in eyre, like the Insolvent Debtors' Court Commissioners.

Mr. Warburton did not see how their being ambulatory would suit a provision prohibiting them from practising in their district.

Sir G. Grey thought some misapprehension existed as to the limit put to the judges practising. They were only to be prevented practising in any matter arising in their respective districts.

Mr. Horsman said, reference had been made to the sheriffs in Scotland; but there they had great leisure to attend the supreme courts. In this case, however, the judges were to have only two months' remission of their duties in the year. Was it likely that they would devote these two months to a study of the law at Westminster, instead of employing them in needful recreation after their ten months' labour.

Sir G. Grey said the full time of all the judges would not be occupied. Some of them would no doubt be fully employed, but others only partially, and of course there would be a difference in the salaries of these judges.

Mr. Henley thought it would be a great evil if the judges were not allowed to attend at Westminster Hall, especially as they would not have the advantage of a bar in their local courts.

The amendment was then withdrawn.

Mr. Wakley moved, as an amendment to the clause, that attorneys be eligible for the office of judge in these courts. He did not propose that they should be appointed, but that the Lord Chancellor, if he found fit men acting as attorneys, should have the power of appointing them. He was sure that attorneys, if eligible for this office, would find no fault on the score of salary. For 1,200*l.* a year they would find men of great legal learning who would most readily accept the office. By the bill of last year attorneys were made eligible for judgeships after 10 years' practice.

Sir G. Grey, having stated his reasons already so fully in support of the clause as it stood, did not deem it necessary further to detain the house with any remarks on this subject.

The committee then divided—

For the amendment . . .	16
Against it . . . . .	53

Majority . . . . . 37

Colonel T. Wood then moved as an amendment, that the judges shall cease to practise as barristers when they accept office.

The committee divided—

For the amendment . . .	12
Against it . . . . .	57

Majority . . . . . 45

The clause was then agreed to.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Lord Chancellor.

*Bristow v. Needham.* 23rd Jan. & 30th July, 1846.

### SECURITY FOR COSTS.

*Objections to a surety for costs during the absence of plaintiff abroad cannot be sustained after the return of the latter within the jurisdiction.*

ON the 24th of June, 1843, the Vice-Chancellor of England made the usual order, that security for costs should be given, the plaintiff having gone to Jersey for the benefit of his wife's health. Defendant objected to the proposed surety, upon the grounds that he did not reside at the place mentioned, and also that judgments to a considerable amount were entered up against him. But the Master reported in favour of the security offered. On the 14th of March, 1844, the Vice-Chancellor ordered the defendant's motion for further security to be dismissed, with costs, and the reversal of this order was also refused, with costs, by the Lord Chancellor, on the 11th January, 1845. The plaintiff returned to England in October, 1844, and an affidavit to that effect was filed in July following.

Mr. Teed, for the defendant, after stating the above objections to the surety, now applied for further security for such costs as had been incurred during the plaintiff's absence abroad. The original order of the Vice-Chancellor was to stay proceedings until security should be given. Proceedings had taken place under this security whilst the plaintiff was abroad, for which the defendant had no security.

The Lord Chancellor (*Lyndhurst*.) without hearing Mr. Cooper and Mr. Calvert for the plaintiff, said, that as the plaintiff had returned, no security was required,—in fact the security was withdrawn,—it would therefore be idle to inquire whether the surety was good or not, and the application must be dismissed with costs.

NOTE.—On the 30th of July last, Mr. Kenyon Parker, with whom was Mr. Anstey, brought this case, under the same circumstances, before the present Chancellor, but his lordship refused to entertain the motion, upon

the grounds, that it would be in effect a rehearing of a matter which had been already disposed of by Lord Lyndhurst. The motion was therefore dismissed with costs.

**Vice-Chancellor of England.**

*Nicholas v. Nicholas.* June 23rd.

APPEARANCE.—CONSTRUCTION OF ORDER  
31ST OF MAY, 1845.

*The court will not order an appearance to be entered for a defendant who cannot be served with a subpoena in consequence of his occupation being of such a nature that he has no fixed place of residence, unless it can be shown that there is reason to believe he is endeavouring to evade service of the subpoena.*

THIS suit was instituted for the administration of a testator's estate, and John Nicholas, a party who had a remote interest, was made a defendant. His occupation being that of a travelling pedlar, he had no fixed place of residence and was seldom long in one place, so that the plaintiffs were unable to serve him with a subpoena. He was heard of at Birmingham about six months ago, but since that time all trace of him had been lost.

Mr. Prior asked for an order that the plaintiff might be at liberty, after a certain time, to enter an appearance for the defendant, as he was, in effect, out of the jurisdiction, although he admitted that the case was not within the orders.

The Vice-Chancellor said, that if the plaintiff's counsel took such a view of the case as to be of opinion that it could not be brought within the orders, his Honour could not alter the practice of the court for the sake of a travelling pedlar, and refused the application.

**Vice-Chancellor Knight Bruce.**

*Clements v. Beresford.* July 28th, 1846.

RECEIVER.—EXECUTOR.—INTEREST.—  
ACCOUNT.—PRINCIPAL AND SURETY.

*The estate of a deceased receiver was liable to make good certain payments, and his executors, neglecting to pay, pursuant to order, the surety was directed to pay the amount with interest at four per cent.*

Mr. Gardner applied in this case for an order directing the surety of a deceased receiver, (whose executors had made default,) to pay what was due, with interest at 5l. per cent. The case made in support of the motion appeared to be this:—The receiver had passed his yearly accounts, and died during the next year. An order was made requiring the receiver's executors to pass the account. The sum of 1200*l.* appeared to be due from the estate of the deceased, and this the executors were directed to satisfy. They did not do so ;

whereupon the present motion was made. It was submitted, that as the receiver himself would have been chargeable with interest at 5l. per cent., his surety was not entitled, upon any principle of equity, to be relieved by a less rate of interest. He relied also upon order 23 of April, 1796. *Dawson v. Raynes*, 2 Russ. 466.

Mr. W. T. S. Daniel, contra. Had the receiver himself been a defaulting party, the surety might have been chargeable with the higher rate of interest. He had passed one year's accounts, and then died. His executors were the defaulting parties.

Vice-Chancellor Bruce. I think that, as in this case, no default whatever was made during the life of the receiver himself, the rate of interest to be paid by the surety, ought not to exceed 4*l.* per cent.

**PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.**

**Royal Assents.** 28th August, 1846

Railway Commissioners.  
Small Debts.  
Wreck and Salvage.  
Private Bills.  
Pawnbrokers.  
Drainage of Lands.  
Contagious Diseases.

**THE QUEEN'S SPEECH.**

It seems not to have been deemed expedient by the government, (as has sometimes been the case,) to take credit for having passed any important measures of law reform. The "bringing justice home to everyman's door," has not been re-echoed on this occasion, although an act has been passed for effectuating that dream of legal perfection.

Parliament was prorogued by commission, from Friday the 28th August, until Wednesday the 4th November.

**THE EDITOR'S LETTER BOX.**

R. H. R. will feel obliged by any of our readers pointing out the statute lately passed which authorises small strips of land adjoining roads to be inclosed by the owners of land lying alongside of such roads.

We have this week given several of the recent statutes, and shall be able, without any extra charge to our subscribers, to place before them all the statutes of the session in the present volume. The Small Debts and Local Courts Act will be commenced in the next number.

We are obliged to C. F. C., and shall attend to the subject soon.

# The Legal Observer.

SATURDAY, SEPTEMBER 12, 1846.

—“Quod magis ad nos  
Pertinet, et nescire malum est, agitamus.”

HORAT.

## SUMMARY OF THE PROVISIONS OF THE SMALL DEBTS ACT.

It will, no doubt, be deemed a convenient course, before submitting to our readers the principal Statute of the Session “for the more easy Recovery of Small Debts and Demands in England,” to precede it by an analysis or summary of its provisions, arranged in such order as may not only facilitate the understanding of the general scope and purport of the act, but afford an easy reference to its various provisions. This method seems the more necessary, because many clauses relating to the jurisdiction of the court, and the mode of proceeding, are scattered over different parts of the act, and ought to be brought into juxta-position, in order clearly to discern the intention of the legislature.

The act commences by reciting, that sundry acts have been passed for the recovery of small debts. It next refers to the acts of 1844 and 1845. The first for “Amending the Laws of Insolvency, Bankruptcy, and Execution,” (7 & 8 Vict. c. 96); and the second for “better securing the Payment of Small Debts,” (8 & 9 Vict. c. 127.) Then it recites the expediency of having “one rule and manner of proceeding for the recovery of small debts and demands throughout England,” and sets forth that the County Court is a court of ancient jurisdiction, but that its proceedings are dilatory and expensive; therefore, it is said to be expedient “to alter and regulate the manner of proceeding in the said courts for the recovery of small debts and demands, and that the courts established under the recited acts of parliament, or such of them as ought to be continued, should be holden as *branches*

of the County Court under the provisions of this act.

These courts, therefore, are to be *County Courts*, and we now proceed to classify the sections under their appropriate heads:—

### ABOLITION OF OLD, AND CONSTITUTION OF NEW, COURTS.

Her Majesty may order the act to be put in execution in such counties as, with the advice of the privy council, may be deemed fit, (s. 1.) And also to divide the counties into such districts as may seem fit, (s. 2.)

The courts held under this act are to have the same jurisdiction as County Courts, and to be Courts of Record, (s. 3.) and the jurisdiction of the County Courts is preserved, (s. 4.)<sup>a</sup>

Her Majesty may order any court under the acts cited in the schedules (A) and (B) to be held as a County Court, and may assign a district to the same, (s. 5.) And when a court shall be established under this act, the recited acts, (7 & 8 Vict. c. 96, and 8 & 9 Vict. c. 127,) and all other acts affecting its jurisdiction, shall be repealed, (s. 6.) But proceedings under the former acts are to be deemed valid, (s. 7.) And orders in council for the purposes of the act, and notice of the intention to take the propriety of such order into consideration, shall be published in the London Gazette,<sup>b</sup> (s. 8.)

<sup>a</sup> The object of this clause, we presume, is to enable the new courts by writ of *justice* to hold pleas to any amount.

<sup>b</sup> Is this notice in the Gazette intended to afford an opportunity to members of the profession, either collectively or individually, to be heard before the privy council, in opposition to the order?

**Exceptions :—**No court is to be established under this act in the city of London, (s. 1.)

The act is not to affect the rights of the Universities of Oxford and Cambridge, (s. 140.) And nothing therein is to affect the Courts of the Warden of the Stanaries, (s. 141.)

#### JURISDICTION OF THE COURT.

The court is authorized to hold all pleas of personal actions where the debt or damage claimed is not more than 20*l.*, whether on balance of account or otherwise.

Excluding actions of ejectment, or in which the title to hereditaments, tolls, fairs, markets, or franchises, shall be in question, or in which the validity of any devise, bequest, or limitation, under a will or settlement may be disputed, or any malicious prosecution, or for libel or slander, or for crim. con., seduction, or breach of promise of marriage, (s. 58.)

One of several persons jointly answerable, may be sued; and such person may obtain contribution from the others jointly liable, (s. 68.) Demands are not to be divided for the purpose of bringing two or more suits, (s. 63.)

The unliquidated balance of a partnership account, or a share under an intestacy, or a legacy under a will not exceeding 20*l.* may be recovered, (s. 65.) So minors may sue for wages, (s. 64.) And executors may sue and be sued, (s. 66.)

No privilege is to be allowed, except as mentioned in the act, (s. 67.)

#### REMOVAL OF CAUSES AND CONCURRENT JURISDICTION OF SUPERIOR COURTS.

No plaint can be removed to a superior court, unless the debt or damage claimed exceed 5*l.* and then only by leave of the judge of the superior court, on such terms, as to payment of costs, giving security for debt or costs, or such other terms, as he shall think fit, (s. 90.)

The concurrent jurisdiction of the superior courts is retained where the plaintiff dwells more than 20 miles from the defendant, or where the cause of action did not arise wholly or in some material point within the jurisdiction of the court within which the defendant dwells or carries on his business, or where an officer of the court is a party, &c., (s. 128.)

If an action be commenced in a superior court, except as last mentioned, and a verdict be found for less than 20*l.*, if the action be founded on *contract*, or less than 5*l.*,

if founded on *tort*, the plaintiff shall have judgment but no costs, unless the judge shall certify that the action was fit to be brought in the superior court, (s. 129.)

#### APPOINTMENT AND QUALIFICATION OF JUDGES.

The Lord Chancellor may appoint as many as shall be needed to be judges of the County Court, who shall be barristers of seven years standing, or barristers having practised as barristers and special pleaders for seven years; or barristers or attorneys-at-law who under the acts cited in schedules (A) and (B), or under 7 & 8 Vict. c. 96, and 8 & 9 Vict. c. 127, shall have been appointed to preside in any court cited in such schedules, (s. 9.)

Proviso, that attorneys acting as judges under the acts cited in schedules (A) and (B), who may be appointed under this act, shall in twelve months cease to practise by themselves or partners, or act as town clerks, clerks of the peace, clerks to justices, or to public boards or companies, (s. 9.)

Appointment of judges who have previously officiated in any County Court not subject to 5 & 6 Vict. c. 122, so as to deprive them of compensation, (s. 15.)

Future vacancies among the judges of the County Courts to be supplied by the Lord Chancellor or Chancellor of the Duchy of Lancaster, if in his sole district. Such judges to be barristers of seven years standing, or who shall have practised as barristers and special pleaders for 7 years, or who shall have been county clerk at the passing of this act,<sup>c</sup> (s. 16.)

The judges not permitted to practise as barristers in their own districts, except those already appointed in the courts of Bath, Bristol, Liverpool, Manchester, Sheffield, Ecclethall, and Middlesex, and now practising in chambers as conveyancing counsel. (s. 17.)<sup>d</sup>

The judges of the County Court are, for inability or misbehaviour, removable by the Lord Chancellor, or by the Chancellor of the Duchy of Lancaster, if within his district, (s. 18.)

The districts of the judges may be changed by the Lord Chancellor, &c., (s. 19.)

In case of illness or unavoidable absence.

<sup>c</sup> Will this include attorneys who have been county clerks?

<sup>d</sup> The consequences of this exception are not clearly limited.

the judge may appoint a deputy, being a barrister of three years standing or an attorney of ten years; and with the approval of the Lord Chancellor may appoint a deputy for two months in any year, such deputy having practised as a barrister for three years,\* (s. 20.)

The judges may act as justices, if in the commission of the peace, (s. 21.)

*Exceptions.*—Judges at present acting in the courts of Bath, Bristol, Liverpool, and Manchester, entitled to the first appointment under this act for those places, (s. 10.)

Stewards of the manors of Sheffield and Ecclesall, appointed under 48 G. 3, c. 103, to be the first judges under this act for those districts, (s. 11.)

The present county clerk of Middlesex, appointed under 23 G. 2, c. 33, to be the first judge under this act, and may continue to appoint a deputy, subject to approval of Secretary of State. The present registrar to be the first clerk, (s. 12.)

The lords of manors in Schedule C. having rights of appointment under the repealed acts are entitled to appoint the officers under this act, subject to the approval of the Secretary of State, (s. 13.)†

The lords of hundreds, manors, and liberties may surrender their courts with the consent of the persons interested, (s. 14,) with a proviso in favour of the officers of the two courts at Bristol, (s. 35.)

#### CLERK OF THE COURT.

The appointment of clerks of the court is vested in the judges of the County Courts, subject to the approval of the Lord Chancellor, (s. 24.) And in populous districts the Lord Chancellor may direct two clerks to be appointed, (c. 25.)

In case of illness or unavoidable absence, the clerk may appoint a deputy, with the approbation of the judge, (s. 26.)

The duties of the clerk in issuing the process of the court, registering orders and judgments, &c., are prescribed by s. 27.

The offices of clerk, treasurer, and bailiff are not to be conjoined, (s. 28.) No officer is allowed to act as an attorney of the court, (s. 29.) And a penalty of 50*l.* is

inflicted for the non-observance of either of these two enactments, (s. 30.)

The clerks are to have the charge of the court houses and offices, and are empowered to appoint and dismiss servants, (s. 55.)

#### TREASURERS AND OTHER OFFICERS.

The commissioners of the Treasury are authorized to appoint treasurers of the courts to be holden under this act, (s. 23.)

The court is to appoint one or more high bailiffs of the court, (s. 31.) But saving the rights of the high bailiffs of Westminster and Southwark, (s. 32.)

The duties of the high bailiffs are described in s. 33; and provision is made in s. 34, for the high bailiffs of courts under the acts cited in schedules (A) and (B).

By s. 36, the clerks, treasurers, and high bailiffs are required to give security.

#### PRACTITIONERS IN THE COURT.

The 91st section provides, that no person shall be entitled to *appear for any other party to any proceeding*, unless he be an attorney of one of the superior courts, or a barrister-at-law instructed by such attorney, or, by leave of the judge, any other person; but no barrister, attorney, or other person, except by leave of the judge, shall be entitled to be *heard to argue any question as counsel*. And no person, not being an attorney, shall be entitled to recover any sum for appearing or acting on behalf of any other person; and no attorney shall be entitled to any sum, unless the debt or damage claimed be more than 40*s.*, or to have more than 10*s.* for his fees and costs, unless the debt or damage claimed shall be more than 5*l.*, or more than 15*s.* in any case; and in no case shall any fee exceeding 1*l.* 3*s.* 6*d.* be allowed for employing a barrister as counsel in the cause.

#### PRACTICE AND COURSE OF PROCEEDING.

The judges are to hold the courts where her Majesty shall direct; and notices for holding the courts are to be put up in conspicuous places, (s. 56.)

The forms of procedure in the courts are to be settled by five of the judges of the superior courts, (s. 78.)‡

*Process.*—The process of the court is to be under the seal of the court, (s. 57); suits are to be entered by plaint in writing, and a summons served according to the rules of practice to be prescribed, (s. 59.)

\* Attorneys are not here included.

† These courts are Ashton-under-Lyne, Birmingham, Cirencester, Kidderminster, Stourbridge, St. Albans, Sheffield, and Stockport.

‡ This power, we presume, will include pleadings, notices, admissions, &c.



A summons may be issued, though the cause of action may not arise in the district, (s. 60.) And processes out of the district of the court may be served by the bailiff of any other court, (s. 61.)

Provision is made for proof of service of process out of the district, or in the absence of the bailiff, (s. 62.)

The judge alone may determine all questions, unless a jury be summoned, (s. 69.)

*Jury.*—Actions may be tried by a jury when the parties require it, (s. 70.) The party requiring a jury is to make a deposit, (s. 71.) Who shall be jurors (s. 72) is enacted, as also, the number of the jury, which is limited to five, (s. 73.)

*Defence.*—Notice is to be given to the clerk, of special defences, who shall communicate the same to the plaintiff, (s. 76.)

*Trial.*—On the day of hearing the plaint, the judge shall proceed in a summary way and give judgment without further pleading or formal joinder of issue, (s. 74.)

No evidence is to be given of any demand that is not in the summons, (s. 75.)

*Evidence.*—The parties in the action, and others, may be examined, (s. 83.)

The clerk of the court may issue summonses to witnesses, (s. 85.)

A penalty is inflicted on witnesses neglecting to attend, (s. 86); and persons giving false evidence are to be deemed guilty of perjury, (s. 84.)

The course of proceeding, in case the plaintiff does not appear or prove his case, (s. 79,) or where the defendant does not appear, (s. 80,) is then prescribed.

The judge may grant time, (s. 81); and the defendant may pay money into court, and of such payment notice is to be given to the plaintiff, (s. 82.)

Minutes of the proceeding of the court are to be kept, (s. 111.)

#### COSTS.—JUDGMENT.—AND EXECUTION.

The costs of any action, not otherwise provided for, are to abide the event, (s. 88.)

The judgment is to be final, unless the court direct a new trial, (s. 89.)

The courts may make orders for payment of the debt or damages by instalments, (s. 92,) and in case of cross-judgments, deduct the smaller sum and let execution for the remainder be issued, (s. 93.)

Execution not to issue till after default in payment of some instalment, and then it may issue for the whole sum due, (s. 95.)

The court may award execution against

the goods, (s. 94.) The effects which may be taken in execution include money and securities for money, but not wearing apparel, bedding, or tools, to the value of 5*l.* (s. 96.) The securities so seized to be held by the high bailiff for the benefit of the plaintiff, who may sue in the defendant's name, (s. 97.) Execution may be had out of the jurisdiction of the court, (s. 104.) With power to the judge to suspend execution, (s. 105,) and to regulate the sale of the goods taken in execution, (s. 106.)

Claims as to goods taken in execution are to be adjudicated in the County Court, (s. 118.)

Provision is then made regarding the liability of goods taken in execution under 8 Anne, c. 17. Landlords may claim rents in arrear for a limited period, and bailiffs making levies may distrain for rent and costs, (s. 107.)

No execution can be stayed by writ of error, (s. 108.) But the execution is to be superseded on payment of the debt and costs, (s. 109,) and the debtor, on such payment, is to be discharged, (s. 110.)

Suits may be settled by arbitration, (s. 77.)

#### PROCEEDINGS IN CASE OF FRAUD.

Parties having obtained an unsatisfied judgment may obtain a summons on a charge of fraud against the defendant in contracting the debt, his means and expectation of payment, &c., (s. 98,) with power to the court to commit, (s. 99,) and to rescind or alter the order, (s. 100.)

Power is also given to the court to examine and commit at the hearing of the cause, (s. 101.) And the mode of issuing and executing warrants of commitment is prescribed, (s. 102); but it is provided that imprisonment shall not operate as a satisfaction for the debt, &c., (s. 103.)

#### PROCEEDINGS IN CHANCERY.

By the 22nd section it is provided, that the judges and other officers to be appointed under this act shall be authorized to perform all such duties relating to any causes or matters depending in Chancery as the Lord Chancellor may direct, and shall be entitled to receive the same fees as are now payable in respect thereof, to be accounted for and applied as the other fees authorized by this act.

#### REPLEVIN.

Actions of replevin may be brought without writ in this court, (s. 119); and

in such actions plaints may be entered, (s. 120.) But actions of replevin may be removed, if the amount exceed 20*l.* or the title be in question, (s. 121.)

#### POSSESSION OF SMALL TENEMENTS.

Possession of small tenements may be recovered by plaint in the County Court; and if the tenant neglect to appear, or refuse to give possession, the judge may, on proof of service of summons, issue a warrant to enforce the same, (s. 122.)

The manner in which such summons shall be served is prescribed, (s. 123.) And it is declared that the judges, clerks, bailiffs, or other officers, shall not be liable to actions on account of proceedings so taken, (s. 124.)

Where the landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity, (s. 125.) Execution of warrant of possession may be stayed, (s. 126,) and the proceedings on the Bond for staying warrant of possession are stated in s. 127.

#### FEES, SALARIES, COMPENSATIONS, AND ACCOUNTS.

Fees to be taken according to schedule (D), and tables to be exhibited in conspicuous places. The amount of the fees may be reduced. Appropriation of surplus fees, (s. 37.)

Compensation is to be made to persons whose rights or emoluments will be diminished, (s. 38.)

Officers of court may be paid by salaries instead of fees. If court abolished, no compensation allowed except to the holders of office in the courts mentioned in schedule (A), (s. 39.)

The amount of salaries to be paid under this act is limited as follows:—1200*l.* to the judge; 600*l.* to the clerk, (excepting the case of the judges and clerks of the courts in schedule A,) and travelling expenses, (s. 40.)

The fees and fines to be accounted for to the treasurer, (s. 41); and the clerks' accounts to be audited and settled by the treasurers, (s. 42.)

The treasurer of the court is to render his accounts to the audit board, (s. 43); and the commissioners of the treasury are to direct how the balances shall be applied, (s. 44.) The accounts of treasurer to be audited under powers of 25 G. 3, c. 52, (s. 45.)

The clerk is to send to the commissioners of audit an account of all sums paid by him to the treasurer, (s. 46); and the ac-

counts, when audited, are to be sent to the treasury, (s. 47.)

The suitors' money, if unclaimed in six years, to be applied as part of the general fund of the court, (s. 112.)

#### COURT HOUSES, OFFICES, AND PRISONS.

The treasurers, with the approval of the Secretary of State, to provide court-houses, offices, &c., (s. 48); and where the common gaols are inconvenient, prisons belonging to courts under the acts cited in schedules (A) and (B) may be used, according to the provisions of 5 & 6 Vict. c. 98, (s. 49.)

Powers for purchasing land, (s. 50.) And the treasurer is empowered to borrow money for the purposes of this act, (s. 51.) A general fund to be raised for paying off money borrowed, (s. 52.) The property of the courts in schedule (A) and (B) is to vest in the treasurer of the County Court, (s. 53); and provision is made for outstanding liabilities, (s. 54.)

#### PENALTIES AND FINES.

Power of committal for contempt of court is given by the 113th section; and a penalty inflicted for assaulting bailiffs, or rescuing goods taken in execution, (s. 114.)

The bailiffs are made answerable for escapes and neglect to levy execution, (s. 115); and remedies are provided against, and penalties inflicted on, bailiffs and other officers for misconduct, (s. 116); and on officers for taking fees besides those allowed, (s. 117.)

The mode of enforcing fines and accounting for them is enacted by s. 87.

Penalties and costs may be recovered before a justice, and levied by distress, (s. 130.) In default of security, offender may be detained till return of warrant of distress, (s. 131.)

In default of sufficient distress, the offender may be committed to gaol not exceeding three months, (s. 132.) Penalties not otherwise applied, to be paid into the general fund, (s. 133.) Justices may proceed by summons in the recovery of penalties, (s. 134.) Form of conviction, (s. 135.) The proceedings are not to be invalid for want of form, (s. 136.)

Distress is not to be deemed unlawful for want of form, (s. 137.)

Actions for proceedings in execution of the act are limited to three months, (s. 138); and in case the damages found are not more than 20*l.*, no costs shall be awarded, (s. 139.)

## FURTHER DEBATE ON THE SMALL DEBTS BILL.

On the 27th August the Earl of Ellenborough presented a petition from the Incorporated Society of Attorneys, Solicitors, and others, not being barristers, practising in the courts of law and equity,—representing that attorneys were competent to perform the duties of judges under the Small Debts Bill, and praying that the Lord Chancellor might be empowered to appoint any attorneys-at-law judges of the courts to be established under that bill.

The following is the petition:—

“To the Right Hon. the Lords Spiritual and Temporal of the United Kingdom of Great Britain and Ireland in parliament assembled.

“The humble petition of the Incorporated Society of Attorneys, Solicitors, Proctors, and others, not being barristers, practising in the Courts of Law and Equity of the United Kingdom,

“Sheweth,—That very late in the present session of parliament, a bill was introduced in your right hon. house, and is now pending, entitled ‘An Act for the more easy Recovery of Small Debts and Demands in England.’

“That it is intended under such bill to create various courts for the purposes thereof, and to vest the appointment of judges of such courts in the Lord Chancellor.

“That various bills have from time to time been introduced into parliament for the above purpose previously to the present session of parliament, and that in such bills it was proposed and intended the judges to be appointed should either be barristers-at-law or attorneys-at-law.

“That, by the bill now pending in your right hon. house, the Lord Chancellor is so restricted in the appointment of judges as to be prevented in future from the appointment of any attorney-at-law, however well qualified to be a judge of any court, to be created under such bill in case the same shall pass into a law.

“That new clauses have been introduced in such bill in the other house of parliament, and various restrictions in the jurisdiction and powers of such intended courts, and of the judges to be appointed under such bill.

“That your petitioners humbly represent to your right hon. house that many attorneys-at-law are qualified to be appointed judges under such bill.

“Your petitioners humbly pray that in such bill the Lord Chancellor may be empowered to appoint any attorneys-at-law to be judges in the courts to be created thereunder whom his lordship may consider duly qualified to be such judges.”

The Lord Chancellor, in moving the consideration of the Commons’ amendments to the Small Debts Bill, observed, that several amendments, not affecting the general principle of the bill, had been introduced in the other house. There is one clause to which he wished to call their lordships’ attention. That clause restricted the qualification of the future judges of the courts to be created under the bill to bar-

risters-at-law. The jurisdiction of the Small Debts’ Courts was extended by this bill, and though the sums involved in the cases brought under their jurisdiction might be comparatively small, the cases might involve legal questions of great difficulty. Now, though he (the Lord Chancellor) was perfectly ready to admit the qualifications, and learning, and ability of many attorneys, yet undoubtedly the general course of education of that class of the legal profession did not render them equally qualified with gentlemen who had been regularly educated for the law as barristers, to act as judges in matters involving doctrines of law. The noble and learned lord then proposed an amendment to enable several judges of existing courts for the recovery of small debts, who had practised as conveyancers, to continue their chamber practice, (but not to practise in the courts,) in the event of their being appointed judges of the new courts.

## QUALIFICATION OF ATTORNEYS AS JUDGES OF SMALL DEBTS COURTS.

We shall shortly have occasion again to advert to this subject, of which we treated in a recent article, (p. 401;) and extract the following from a morning contemporary.

“UNDER the present Small Debts Act, judgements of Courts of Request may be held, and many of them are held by attorneys as well as barristers. The present act only allows of the appointment of attorneys, in cases where they already hold judgements, and are re-appointed under this act in virtue of such judgements. Mr. Wakley has failed in an amendment to the present act, that they should be admissible to judgements on the same terms as barristers. There is much weight in the objection of the Attorney-General, that ‘the barristers’ line of practice qualified him for judicial functions better than the attorney’s.’ The attorney has directed his attention to details and the getting up of cases, while the barrister applied to these cases the general rules of law.’ Yet, admitting the weight of this distinction, we cannot but think it unwise to exclude ‘*en masse*’ a whole branch of the legal profession. Grant that there are few attorneys likely to make good judges; grant all the danger arising from underhand business-arrangements for fomenting litigation and increasing fees; why should the Lord Chancellor be forbidden to appoint the ‘fit though few’ among attorneys in cases where no such danger need be apprehended. Such distinctions keep up many unworthy prejudices, and draw an artificial line of demarcation, where for all good purposes, the real one is marked enough. On this point Mr. Henley spoke sensibly, when he suggested that the Lord Chancellor should be perfectly unfettered in his appointment of judges. Public opinion is a safe and sufficient check on abuse of patronage in courts so popular and open as the Small Debts Courts must be.”—*Daily News*, Aug. 23, 1846.

# NEW STATUTES, EFFECTING ALTERATIONS IN THE LAW.

## SMALL DEBTS ACT.

9 & 10 VICT. c. 95.

An Act for the more easy Recovery of Small Debts and Demands in England. [August 28, 1846.]

1. *Her Majesty may order this act to be put in execution.*—Whereas sundry acts of parliament have been passed from time to time for the more easy and speedy recovery of small debts within certain towns, parishes, and places in England: And whereas by an act passed in the 7 & 8 Vict. c. 96, intituled “An Act to amend the Laws of Insolvency, Bankruptcy, and Execution,” arrest upon final process in actions of debt not exceeding 20*l.* was abolished, except as to certain cases of fraud and other misconduct of the debtors therein mentioned: And whereas by an act passed in the 8 & 9 Vict. c. 127, intituled “An Act for the better securing the Payment of Small Debts,” further remedies were given to judgment creditors, in respect to debts not exceeding 20*l.*, for the discovery of the property of debtors, and punishment of frauds committed by them: And whereas by the last-mentioned act her Majesty is enabled, with the advice of her privy council, to extend the jurisdiction of certain courts of requests and other courts for the recovery of small debts to all debts and demands, and all damages arising out of any express or implied agreement, not exceeding 20*l.*, and also to enlarge and in certain cases to contract the district of such courts, and make certain other alterations in the practice of such courts in manner in the now-reciting act mentioned; and it is expedient that the provisions of such acts should be amended, and that one rule and manner of proceeding for the recovery of small debts and demands should prevail throughout England: And whereas the County Court is a court of ancient jurisdiction having cognizance of all pleas of personal actions to any amount by virtue of a writ of justices issued in that behalf: And whereas the proceedings in the County Court are dilatory and expensive, and it is expedient to alter and regulate the manner of proceeding in the said courts for the recovery of small debts and demands, and that the courts established under the recited acts of parliament, or such of them as ought to be continued, should be holden after the passing of this act as branches of the County Court under the provisions of this act, and that power should be given to her Majesty to effect these changes at such times and in such manner as may be deemed expedient by her Majesty, with the advice of her privy council: Be it enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall be law-

ful for her Majesty, with the advice of her privy council, from time to time to order that this act shall be put in force in such county or counties as to her Majesty, with the advice aforesaid, from time to time shall seem fit; and this act shall extend to those counties concerning which any such order shall have been made, and not otherwise or elsewhere: Provided always, that no court shall be established under this act in the city of London.

2. *Counties to be divided into districts.*—And be it enacted, That it shall be lawful for her Majesty, with the advice aforesaid, to divide the whole or part of any such county, including all counties of cities and counties of towns, cities, boroughs, towns, ports, and places, liberties and franchises therein contained, or thereunto adjoining, into districts, and to order that the county court shall be holden for the recovery of debts or demands under this act in each of such districts, and from time to time to alter such districts as to her Majesty, with the advice aforesaid, shall seem fit, and to order from time to time that the number of districts in and for which the court shall be holden shall be increased until the whole of such county shall be within the provisions of this act, and with the advice aforesaid to alter the place of holding any such court, or to order that the holding of any such court be discontinued, or to consolidate any two or more of such districts, and from time to time, with the advice aforesaid, to declare by what name and in what towns and places the county court shall be holden in each district: and if it shall appear to her Majesty that any part of any county, liberty, city, borough, or district may conveniently be declared within the jurisdiction of the county court of an adjoining county, it shall be lawful for her Majesty, with the advice aforesaid, to order that such part shall be taken to be within the jurisdiction of the county court holden for the purposes of this act for such adjoining county in and for such district as her Majesty shall order, in like manner as if it were part of such adjoining county.

3. *Courts held under this act to have the same jurisdiction as county courts, and to be courts of record.*—And be it enacted, That every court to be holden under this act shall have all the jurisdiction and powers of the county court for the recovery of debts and demands, as altered by this act, throughout the whole district for which it is holden, and there shall be a judge for each district to be created under this act, and the county court may be holden simultaneously in all or any of such districts; and every court holden under this act shall be a court of record.

4. *Preserving the jurisdiction of county courts.*—And be it enacted, That for all purposes, except those which shall be within the jurisdiction of the courts holden under this act, the county court shall be holden as if this act had not been passed; and all proceedings commenced in the county court of any county before the time when any court shall be holden under this act in such county may be continued,

executed, and enforced against all persons liable thereunto, in the same manner as if they had been commenced under the authority of this act.

5. *Her Majesty may order any court under acts in schedules (A.) and (B.) to be held as a county court, and may assign a district to the same.*—And be it enacted, That it shall be lawful for her Majesty, with the advice of her privy council, to order that any court holden for the recovery of small debts or demands within the provisions of any act cited in either of the schedules annexed to this act, and marked (A.) and (B.) respectively, shall be holden as a county court; and it shall be lawful for her Majesty, with the advice aforesaid, to assign a district to every such court, either greater or less than the district in which the court holden under the provisions of any such act now has jurisdiction, and to alter the place of holding any such court, or to order that any such court be abolished; and every such court shall continue to be holden under the act according to which it is now constituted or regulated until the time mentioned in any such order which shall be made with reference to such court; and from and after the time mentioned in any such order the act or acts under which such court is now constituted, so far as the same relate to the establishment or jurisdiction or practice of a court for the recovery of small debts or demands, shall be repealed, but not so as to revive any act thereby repealed; and such court so ordered to be holden as a county court shall thenceforth be holden as a county court under this act, and in all respects as if it had been originally constituted under the provisions of this act.

6. *When a court shall be established under this act, recited acts and all other acts affecting its jurisdiction, repealed.*—And be it enacted, That as soon as a court shall have been established in any district under this act, and also at the time mentioned in any such order which shall have been made as aforesaid for holding any of the courts mentioned in either of the said schedules as a county court under this act, the several provisions and enactments of the said acts of parliament of the 7 & 8 and 8 & 9 Vict. and of every other act of parliament hereuntofore passed, so far as the same respectively relate to or affect the jurisdiction and practice of the court so established or ordered to be holden as a county court, or give jurisdiction to any court, or to any commissioner of the Court of Bankruptcy, with respect to judgments or orders obtained in the court so established or ordered to be holden as a county court, shall be repealed.

7. *Proceedings under former acts to be valid.*—Provided always, and be it enacted, That all proceedings in execution of the said acts or any of them commenced before the passing of this act, or before the days severally appointed for the alteration of the constitution of the said courts, shall be as valid to all intents and purposes as if this act had not been passed, or as if the said courts had not been altered, and

may be continued, executed, and enforced against all persons liable thereto in the same manner as if they had been commenced under the authority of this act.

8. *Orders in council to be published in the London Gazette.*—And be it enacted, That any order in council made for the purposes of this act shall be published in the *London Gazette*; and notice of the intention of her Majesty to take into consideration the propriety of making any such order shall be published in the *London Gazette* one calendar month at least before any such order shall be made.

9. *Appointment and qualification of judges. Proviso as to attorneys acting as judges under acts cited in schedules (A.) and (B.)*—And be it enacted, That the Lord Chancellor shall appoint as many fit persons as are needed to be judges of the county court under this act, each of whom shall be a barrister-at-law who shall be of seven years' standing, or who shall have practised as a barrister and special pleader for at least seven years, or a barrister or attorney-at-law who, under the provisions of any of the acts cited in the said schedules (A.) and (B.), or under the provisions of either of the said acts of the 7 & 8 and 8 & 9 Vict., shall have been nominated or appointed to preside in or hold any court constituted or held under any of the acts cited in either of the said schedules (A.) and (B.), whether by the title of judge or barrister, or county clerk, assessor, or steward, or deputy steward, or by any other title or style whatsoever, or a person filling the office of judge of the county court, or county clerk, in the same county, at the time of the passing of this act; Provided always, that every attorney-at-law who shall be appointed a judge of the county court under this act, and who shall be the partner of any other attorney-at-law, shall, within twelve calendar months next after entering on the said office of judge of the county court, dissolve such partnership or vacate the said office of judge, and shall not during his continuance as such judge enter into any new partnership; and that no attorney-at-law who shall be appointed a judge of any county court under this act shall be, either by himself or his partner employed or act as town clerk, or clerk of the peace of any county, city, or borough, or as clerk to any bench of justices, or as clerk or secretary to any board of guardians or governors or directors of the poor, or of any vestry or local or parochial board of trustees or commissioners, or of any public company or corporation whatsoever, or directly or indirectly concerned as attorney or agent for any party in any court regulated by this act, or, after the expiration of the said term of twelve calendar months, in any other court of law or equity.

10. *Judges at present acting in the courts of Bath, Bristol, Liverpool, and Manchester entitled to the first appointment under this act for those places.*—And whereas, under the provisions of the several acts cited in the schedule marked (A.) annexed to this act, barristers have been appointed and now act as salaried commissioner or as assessor or assistant to the

commissioners appointed to hold the several courts of request constituted or regulated by the said several acts in the cities of Bath and Bristol, and in the boroughs of Liverpool and Manchester; be it enacted, That when any order shall be made for holding a court under this act within the said cities and boroughs respectively, districts shall be constituted which shall comprise at least the whole of the said cities and boroughs respectively, and every such barrister who shall have been on the first day of June in this year the salaried commissioner or assessor or assistant to the commissioners appointed to hold the said several courts of request, and who shall continue to hold the same office at the time when such order as last aforesaid shall be made respecting their city or borough respectively, shall be entitled to be appointed the first judge under this act of the court to be holden in and for the said cities and boroughs respectively.

11. *Stewards of the manors of Sheffield and Ecclesall appointed under 48 G. 3, c. 103, to be the first judges under this act for those districts.*—And whereas an act was passed in the 48 G. 3, c. 103, intituled, “An Act for regulating the Proceedings in the Courts Baron of the Manors of Sheffield and Ecclesall in the County of York,” under the provisions of which act John Parker, Esq. has been appointed and is steward of the manor of Sheffield, and Daniel Maude, Esq. has been appointed and is steward of the manor of Ecclesall; be it enacted, That if the said John Parker shall continue steward of the manor of Sheffield when any order shall be made for holding a court under this act within the liberty of Hallamshire, a district shall be constituted which shall comprise at least the whole liberty of Hallamshire, except the hamlet or bierlow of Ecclesall; and if the said Daniel Maude shall continue steward of the manor of Ecclesall when any order shall be made for holding a court under this act in the manor of Ecclesall, another district shall be constituted under the provisions of this act, which shall comprise at least the whole hamlet or bierlow of Ecclesall; and in such cases respectively the said John Parker shall be entitled to be appointed the first judge under this act of the court to be holden in the district comprising the liberty of Hallamshire, except the bierlow of Ecclesall, and the said Daniel Maude shall be entitled to be appointed the first judge under this act of the court to be holden in the district comprising the bierlow of Ecclesall; and the districts of the said two courts shall not be reduced within the said limits respectively, so long as the said John Parker and Daniel Maude respectively shall continue judges of the said courts; and the present deputy stewards of the said two courts baron shall be entitled to be appointed the first clerks of the said two courts respectively, or in case of the consolidation of the said two courts, to act jointly as clerks of the consolidated court, under such regulations as to the division of duties and emoluments of the office as shall be

made by order of court, with reference to the duties and emoluments of their offices in the said two courts, before such consolidation, in case of difference between them; and the said John Parker and Daniel Maude shall have the same privilege of holding the said courts by deputy which they now have of holding the said courts baron by deputy, provided only that the appointment of every such deputy shall be subject to the approval of one of her Majesty’s principal secretaries of state; and the said John Parker and Daniel Maude shall hold the said courts in all other respects according to the provisions of this act.

12. *The present county clerk of Middlesex appointed under 23 G. 2, c. 33, to be the first judge under this act, and may continue to appoint a deputy, subject to approval of secretary of state. Present registrar to be the first clerk.*—And whereas the county court of Middlesex is regulated under the provisions of an act passed in the 23 G. 2, c. 33, intituled, “An Act for preventing Delays and Expenses in the Proceedings in the County Court of Middlesex, and for the more easy and speedy recovery of Small Debts in the said County Court,” under which the county clerk is empowered to appoint a deputy to act for him in his said office of county clerk: And whereas the said county of Middlesex within the jurisdiction of the said court is so populous that it will be expedient that several districts should be constituted therein under this act; be it enacted, That if the present county clerk of Middlesex shall continue county clerk of Middlesex when any order shall be made for holding a court under this act within the jurisdiction of the said court, he shall be entitled to be appointed the first judge under this act of such of the said districts as he shall select, and shall hold the said court in all respects according to the provisions of this act, except that he shall be removable from the said office of judge only in the same manner as he is now by law removable from the office of county clerk, and that he shall have power to hold the court by his present deputy, and on vacancy of the office of deputy to appoint a deputy to hold the said court for him, provided such deputy be a barrister of not less than three years’ standing, and shall be approved by one of her Majesty’s principal secretaries of state; and the present registrar of the said county court shall be entitled to be the first clerk of the court holden in the district so selected by the county clerk; and all suits and proceedings commenced in the county court of Middlesex before the division of the said county into districts shall be continued, and may be executed and enforced, as if they had commenced under this act before the said county clerk in the district so selected by him.

13. *Provisions for certain lords of manors having rights of appointment under the acts hereby repealed.*—And be it enacted, That whenever any order shall be made for holding a court under this act within the several towns mentioned in the first column of the schedule

marked (C.) annexed to this act, then, upon the next vacancy which shall happen after the passing of this act in the several offices mentioned in the second column of the said schedule (C.) in conjunction with such courts, the several lords for the time being of the manors and liberties mentioned in the third column of the said schedule (C.) in conjunction with the said courts shall be entitled to appoint persons, properly qualified according to the provisions of this act, to fill the said offices respectively, subject nevertheless in each case to the approval of one of her Majesty's principal secretaries of state.

14. *Lords of manors, &c. may surrender courts, with consent of persons interested.*—And be it enacted, That it shall be lawful for the lord of any hundred, or of any honor, manor, or liberty, having any court in right thereof in which debts or demands may be recovered, to surrender to her Majesty the right of holding such court (for any such purpose, with the consent of any steward or other officer, if any, having a freehold office in such court,) or upon the next vacancy in any such freehold office; and from and after such surrender such court shall be discontinued, and the right of holding such court shall cease, and all proceedings commenced in such courts may thereafter be continued, and shall be enforced and executed, as if they had been commenced under the authority of this act in a county court holden for the district in which the cause of action arose; but no person shall be entitled to claim any compensation under this act by reason of any such surrender: Provided always, that the surrender of the right of holding any such court for the recovery of debts and demands shall not be deemed to infer the surrender or loss of any other franchise incident to the lordship of such hundred, honor, manor, or liberty, and that the court thereof may be holden for all other purposes, if any, incident thereunto, as now by law it may.

15. *Appointments of judges who have previously officiated in any county court, not subject to 5 & 6 Vict. c. 122.*—And be it declared and enacted, That the appointment of any person who at the passing of this act shall by any of the titles herein-before specified preside in or hold any court constituted or held under any of the acts cited in either of the said schedules (A.) and (B.), to be the judge of any county court, shall not be deemed an appointment to hold a public office or employment within the meaning of an act passed in the 5 and 6 Vict. c. 122, intituled, "An Act for the Amendment of the Law of Bankruptcy," so as to deprive him of any compensation to which he may be entitled under the said act.

16. *For supplying vacancies among the judges of the county court.*—And be it enacted, That from time to time when any judge appointed under this act shall die, or be removed, and the district for which he was appointed shall not be consolidated with any other district, another judge shall be appointed, who shall be a barrister at law who shall be of seven years

standing, or who shall have practised as a barrister and special pleader for at least seven years, or who shall have been the county clerk of the same county at the time of the passing of this act; and every such appointment shall be made by the Lord Chancellor, or, where the whole of the district is within the Duchy of Lancaster, by the chancellor of the Duchy of Lancaster.

17. *Judges not to practise as barristers in their districts, except in certain cases.*—And be it enacted, That no judge appointed under this act shall during his continuance as such judge practise as a barrister within the district for which his court is holden under this act, except those barristers already appointed to preside in or hold the said courts in Bath, Bristol, Liverpool, Manchester, Sheffield, Runclesall, and Middlesex, and now practising in chambers as conveyancing counsel, who may continue such practice.

18. *Judges of the county court removable for inability, &c.*—And be it enacted, That it shall be lawful for the said Lord Chancellor, or, where the whole of the district is within the Duchy of Lancaster, for the chancellor of the said Duchy, if he shall think fit, to remove for inability or misbehaviour any such judge already appointed or hereafter to be appointed.

19. *Districts of judges may be changed.*—Provided always, and be it enacted, That it shall be lawful for the Lord Chancellor or Chancellor of the said Duchy, within their several jurisdictions, to remove any judge from any district to which he shall have been appointed, for the purpose of appointing him to any other district in which the salary of such judge shall not be less than in the district from which he shall be so removed.

20. *As to the appointment of a deputy to a judge.*—And be it enacted, That in case of illness or unavoidable absence, the cause whereof shall be entered on the minutes of the court, it shall be lawful for the judge appointed to hold any court under this act, or, in case of the inability of the judge to make such appointment, for the Lord Chancellor, or, where the whole of the district is within the Duchy of Lancaster, for the Chancellor of the Duchy, to appoint some other person, who shall be a judge appointed under this act, or who shall have practised as a barrister-at-law for at least three years, or as an attorney of one of her Majesty's superior courts of common law for ten years, but not then residing or practising as an attorney in the district for which the court is holden, to act as the deputy of such judge during such illness or unavoidable absence; and it shall also be lawful for the judge, with the approval of the said Lord Chancellor or Chancellor of the Duchy, to appoint a deputy, who shall be a judge appointed under this act, or who shall have practised as a barrister-at-law for at least three years, to act for him for any time or times not exceeding in the whole two calendar months in any consecutive period of twelve calendar months; and every deputy so appointed, during the time for which he

shall be so appointed, shall have all the powers and privileges and perform all the duties of the judge for whom he shall have been so appointed.

21. *Judges may act as justices if in the commission of the peace.*—And be it enacted, That every judge of the county court whose name shall be inserted by her Majesty in any commission of the peace for the county, riding, or division of a county for which he is appointed judge of the county court may and shall act in the execution of the office of justice of the peace for the said county, riding, or division, although he may not have such qualification by estate or interest in lands, tenements, and hereditaments, as is required by law in the case of other persons being justices of the peace for a county, provided that he be not disqualified by law to act as a justice of the peace for any other cause or upon any other occasion than in respect of the want of such an estate or interest as aforesaid.

22. *Judges, &c., appointed under this act authorized to perform certain duties relating to matters depending in the Court of Chancery.*—And be it enacted, That the judges and other officers to be appointed under this act shall be authorized and required to perform all such duties in or relating to any causes or matters depending in the High Court of Chancery, or before any judge thereof, or before the Lord Chancellor in the exercise of any authority belonging to him, necessary or proper to be done in their respective districts, as the Lord Chancellor shall from time to time by any general order direct, and for this purpose, and subject to the general rules and orders of the said court, shall have and exercise all such authorities as may be duly exercised by the commissioners or other officers of the said court by whom such duties are now usually performed, and shall be entitled to receive the same fees and sums of money as are now payable in respect thereof, to be accounted for and applied by them as the other fees authorized by this act to be received are directed to be accounted for and applied: Provided always, that the future amount of such fees shall continue subject to the same authority for revising the same to which it is now subject.

23. *Treasury to appoint treasurers of courts holden under this act.*—And be it enacted, That the commissioners of her Majesty's treasury of the United Kingdom of Great Britain and Ireland shall appoint so many persons as they shall think fit to be treasurers of the courts holden under this act, and may remove any such treasurer, if they shall see occasion so to do, and appoint another person in his room; and every such treasurer shall be paid by salary in such manner and to such amount as the said commissioners from time to time shall order; and the salary of every such treasurer shall be paid out of the consolidated fund of the United Kingdom of Great Britain and Ireland: Provided always, that the person appointed or acting as treasurer before the passing of this act to any court holden under any act cited in either of the said schedules (A.) and

(B.), if not disqualified under this act, shall be entitled to be the first treasurer of the same court respectively, when holden as a county court under this act, in every case in which a separate treasurer shall be appointed exclusively for such court, and shall in such case continue to exercise his office, subject to the power of removal provided in this act.

24. *Appointment of clerks vested in judges, subject to approval of Lord Chancellor.*—And be it enacted, That for every court under the authority of this act there shall be a clerk, who shall be an attorney of one of her Majesty's superior courts of common law, and whom the judge shall be empowered to appoint, subject to the approval of the Lord Chancellor, and, in case of inability or misbehaviour, to remove, subject to the like approval; and, until otherwise directed by her Majesty, with the advice of her privy council, every such clerk shall be paid by fees as herein-after provided; and in cases requiring the same such assistant clerks as may be necessary shall be provided and paid by the clerk of the court.

25. *In populous districts Lord Chancellor may direct two clerks to be appointed.*—And be it enacted, That it shall be lawful for the Lord Chancellor, in populous districts in which it shall appear to him expedient, to direct that two persons shall be appointed to execute jointly the office of clerk, under such regulations as to the division of the duties and emoluments of the said office as shall be from time to time made by order of court in case of difference between them, each of such persons being qualified as is hereinbefore provided in the case of a single clerk; and where under the provisions of any act cited in either of the said schedules (A.) and (B.) more than one clerk is now acting in and for the court holden under such act, the same number of clerks shall be continued, unless it shall seem expedient to the Lord Chancellor to order that such number be reduced.

26. *In cases of illness, &c., of clerk a deputy may be appointed.*—And be it enacted, That it shall be lawful for the clerk of any such court, with the approval of the judge, or, in case of inability of the clerk to make such appointment, for the judge to appoint from time to time a deputy, qualified to be appointed clerk of the said court, to act for the clerk of the said court at any time when he shall be prevented by illness or unavoidable absence from acting in such office, and to remove such deputy at his pleasure; and such deputy while acting under such appointment shall have the like powers and privileges, and be subject to the like provisions, duties, and penalties for misbehaviour, as if he were the clerk of the said court for the time being.

27. *Duties of clerks.*—And be it enacted, That the clerk of each court, with such assistant clerks as aforesaid, in cases requiring the same, shall issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments of the said court, and keep an account of all proceedings of the court,



and shall take charge of and keep an account of all court fees and fines payable or paid into court, and of all monies paid into and out of court, and shall enter an account of all such fees, fines, and monies in a book belonging to the court, to be kept by him for that purpose, and shall from time to time, at such times as shall be directed by order of the court, submit his accounts to be audited or settled by the treasurer.

28. *Offices of clerk, treasurer, and bailiff not to be conjoined.*—And be it enacted, That it shall not be lawful for the clerk of any court holden under this act, or the partner of any such clerk, or any person in the service or employment of such clerk or his partner, to act as treasurer or high bailiff of the court; or for the treasurer, his partner or clerk, or any person in the service or employment of such treasurer or his partner, to act as clerk or high bailiff; or for the high bailiff, his partner or clerk, or any person in the service or employment of such high bailiff or his partner, to act as clerk or treasurer of the court.

29. *Officers not to act as attorneys in the court.*—And be it enacted, That no clerk, treasurer, high bailiff, or other officer of the court shall, either by himself or his partner, be directly or indirectly engaged as attorney or agent for any party in any proceeding in the said court.

30. *Penalty of 50*l.* on non-observance of the two previous enactments.*—And be it enacted, That every person who, being the clerk of any such court, or the partner of such clerk, or a person in the service or employment of any such clerk or of his partner, shall accept the office of treasurer or high bailiff of such court, or who, being the treasurer of any such court, or the partner of any such treasurer, or a person in the service or employment of any such treasurer or of his partner, shall accept the office of clerk or high bailiff in the execution of this act, or who being the high bailiff of such court, or the partner of any such high bailiff, or a person in the service or employment of any such high bailiff or of his partner, shall accept the office of clerk or treasurer in the execution of this act, and also every clerk, treasurer, high bailiff, or other officer of any such court who shall be, by himself or his partner, or in any way, directly or indirectly, concerned as attorney or agent for any party in any proceeding in the said court, shall for every such offence forfeit and pay the sum of 50*l.* to any person who shall sue for the same in any of her Majesty's superior courts of record, by action of debt or on the case.

31. *Appointment of bailiffs.*—And be it enacted, That for every such court there shall be one or more high bailiffs, whom the judge shall be empowered by order of court to appoint, and, in case of inability or misbehaviour, to remove by a like order; and every such high bailiff shall be empowered, subject to the restrictions hereinafter contained, by any writing under his hand to appoint a sufficient number of able and fit persons, not exceeding such

number as shall be from time to time allowed by the judge, to be bailiffs, to assist the said high bailiff, and at his pleasure to dismiss all or any of them, and appoint others in their stead; and every bailiff so appointed may also be suspended or dismissed by the judge.

32. *Provision for the high bailiffs of Westminster and Southwark.*—Provided always, and be it enacted, That, until parliament shall otherwise direct, the high bailiff of Westminster shall have the execution of all process issuing out of any of the said courts the jurisdiction of which shall include the city and liberty of Westminster or any part thereof, and shall be deemed the high bailiff of such courts; and the high bailiff of Southwark shall have the execution of all process issuing out of any of the said courts the jurisdiction of which shall include the borough of Southwark or any part thereof, and shall be deemed the high bailiff of such last-mentioned courts, and no other high bailiff shall be appointed for such courts.

33. *Duties of high bailiffs, &c.*—And be it enacted, That the said high bailiffs or one of them shall attend every sitting of the court, for such time as shall be required by the judge, unless when their absence shall be allowed for a reasonable cause by the judge, and shall, by themselves or the bailiffs appointed to assist them as aforesaid, serve all the summonses and orders, and execute all the warrants, precepts, and writs, issued out of the court; and the said high bailiffs and bailiffs shall in the execution of their duties conform to all such general rules as shall be from time to time made for regulating the proceedings of the court, as hereinafter provided, and, subject thereunto, to the order and direction of the judge; and the said high bailiffs shall be entitled to receive all fees and sums of money allowed by this act in the name of fees payable to the bailiff, out of which they shall provide for the execution of the duties for which such fees are allowed, and for the payment of the bailiffs and officers appointed to assist them, according to such scale of remuneration as shall be from time to time approved by the judge; and every such high bailiff shall be responsible for all the acts and defaults of himself and of the bailiffs appointed to assist him, in like manner as the sheriff of any county in England is responsible for the acts and defaults of himself and his officers.

34. *Provision respecting clerks and high bailiffs of courts under act, cited in schedules (A.) and (B.).*—Provided always, and be it enacted, That the persons holding the offices or performing the duties of clerks and high bailiffs in any court holden under any act cited in either of the said schedules (A.) and (B.) on the 1st day of June in this year, and who shall continue respectively to hold the same offices or to perform the same duties at the time when such act shall be repealed under the provisions of this act, whether or not qualified as hereinbefore provided, shall be entitled, if not disqualified under this act, to be the first clerks and high bailiffs of the same court when

holden as a county court under this act, and shall continue to execute their several offices, subject to the power of removal provided in this act, except that the clerks and high bailiffs already appointed to any court named in the said schedule (A.) shall be removable only for such cause as would have warranted their removal under the acts according to which their court is now holden; and where, under the provisions of any of the said acts, more than one clerk was on the said 1st day of June, and shall be, when such act shall be repealed, under the provisions of this act, acting in and for any of the said courts, or in and for any district or division of any court, the same persons shall jointly execute the office of clerk of the same courts as aforesaid, under such regulations as to the division of the duties and emoluments of the said office as shall be from time to time made by order of the court, in case of difference between them: Provided always, that if the clerk of any court cited in the said schedule (A.) shall, within one calendar month next after the repeal of the act under which it is now holden, decline to accept the office of clerk to the same court as holden under this act, it shall be lawful to the commissioners of her Majesty's treasury, if they shall think fit, to take into consideration the special circumstances of each case, and to award such compensation to be paid to such clerk as under the circumstances they shall think reasonable, in the manner herein provided in the case of persons whose emoluments will be diminished or taken away by this act.

35. *Provision respecting the officers of the two courts at Bristol.*—And whereas the jurisdiction of the court of conscience in the city of Bristol, under the provisions of an act passed in the first year of the reign of her Majesty, and cited in the schedule (A.) to this act annexed, extends to the recovery of debts and demands not exceeding 40s.; and the jurisdiction of the court of requests in the said city, under the provisions of an act passed in the 56 G. 3, and also cited in the said schedule (A.), extends to the recovery of debts and demands above 40s. and not exceeding 15l.; be it enacted, That in case the persons now holding the offices of registrar and clerk and deputy registrar of the said court of conscience shall continue to hold the same offices respectively when a court shall be established in the said city of Bristol under the provisions of this act, they shall be entitled to hold the office and execute the duties of clerks of any such court in all causes and matters relating to debts, claims, and demands

not exceeding 40s.; and the said persons severally shall be removable only for such cause as would have warranted their removal under the several acts according to which the said courts are now holden.

36. *Treasurers, clerks, and high bailiffs to give security.*—And be it enacted, That the treasurer, clerk, and high bailiff of every court holden under this act who may receive any monies in the execution of his duty shall give security, for such sum and in such manner and form as the commissioners of her Majesty's treasury from time to time shall order, for the due performance of their several offices, and for the due accounting for and payment of all monies received by them under this act, (or which they may become liable to pay for any misbehaviour in their office.)

37. *Fees to be taken according to schedule (D.), and tables to be exhibited in conspicuous places. Fees may be reduced. Appropriation of surplus fees.*—And be it enacted, That there shall be payable on every proceeding in the courts holden under this act, to the judges, clerks, and high bailiffs of the several courts, such fees as are set down in the schedule marked (D.) to this act annexed, or which shall be set down in any schedule of fees reduced or altered under the power hereinafter contained for that purpose, and none other; and a table of such fees shall be put up in some conspicuous place in the court house and in the clerk's office; and the fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, on or before such proceeding, and in default payment thereof shall be enforced by order of the judge by such ways and means as any debt or damage ordered to be paid by the court can be recovered; and the fees upon executions shall be paid into court at the time of the issue of the warrant of execution, and shall be paid by the clerk of the court to the bailiff upon the return of the warrant of execution, and not before: Provided always, that it shall be lawful for one of her Majesty's principal secretaries of state, with the consent of the commissioners of her Majesty's treasury, to lessen the amount of the fees to be taken in the courts holden under this act in such manner as to him shall seem fit, and again to increase such fees, so that the scale of fees given in the schedule to this act be not in any case surpassed; and in every court holden under this act in which the fees allowed to be taken by the judges, clerks, or bailiffs of the court shall appear to be more than sufficient, it shall be lawful for the said secretary of state to order that a certain part only of their fees shall be paid to them respectively, not exceeding, in the case of judges and clerks, the sums hereinafter mentioned as the greatest salaries to be by them respectively received; and in such case, and so long as such direction shall be in force, the amount of the residue of the fees shall be accounted for and paid to the treasurer of the court, and shall form part of the general fund of the court; but

no such order shall be made to reduce the fees of any of the judges, clerks, and officers of any court mentioned in the said schedule (A.) (so long as they shall be paid by fees) below the average amount of their fees or emoluments during the seven years next before the passing of this act, with a reasonable increase for any increase of business which they may severally have to perform by reason of this act.

38. *Compensation for persons whose rights or emoluments will be diminished.*—And be it enacted, That every person who is entitled to any franchise, right of appointment, or office, under any of the acts under which any court mentioned in the said schedule (A.) is holden, and every person who shall have been entitled to any fees or salary for his services in the execution of any of the same acts, or for the issue of any writs to the sheriff out of the High Court of Chancery, and also every person who is entitled to any franchise or right of appointment to hold office in any court in any district in which the county court had not jurisdiction before the passing of this act, and in which district a court shall be established under the provisions of this act, and also every person holding any office in any such last-mentioned court whose franchise or right of appointment or office shall be affected, abolished, or taken away, or whose emoluments shall be diminished or taken away under the operation of this act, shall be entitled to make a claim for compensation to the commissioners of her Majesty's treasury within six calendar months after the passing of this act, or after the alteration of such court; and it shall be lawful for the said commissioners, in such manner as they shall think proper, to inquire what was the nature of the franchise or right of appointment, and what was the tenure of any such office, and what were the lawful fees and emoluments in respect of which such compensation should be allowed; and the commissioners in each case shall award such gross or yearly sum and for such time as they shall think just to be awarded upon consideration of the special circumstances of each case; and all such compensations shall be paid out of the consolidated fund of the united kingdom of Great Britain and Ireland: Provided always, that if any person holding any office in any of the said courts shall be appointed after the passing of this act to any public office or employment, the payment of the compensation awarded to him under this act, so long as he shall continue to receive the salary or emoluments of such office or employment, shall be suspended if the amount of such salary or emoluments is greater than the amount of such compensation, or if not, shall be diminished by the amount of such salary or emoluments: Provided also, that nothing in this act contained shall be deemed to entitle any person to compensation for the loss or diminution of the profits of any office to which he shall have been appointed under any act containing a provision, either that he is not to be entitled to compensation for the loss or diminution of the profits of his office, or that

such act shall cease on or within a limited time after the passing of any general act for the recovery of small debts, or under the provisions of either of the said acts of the eighth year of her Majesty and of the ninth year of her Majesty.

39. *Officers of courts may be paid by salaries instead of fees.*—If court abolished, no compensation allowed except in certain cases.—And be it enacted, That it shall be lawful for her Majesty, with the advice of her privy council, to order that the judges, clerks, bailiffs, and officers of the courts holden under this act, or any of them, shall be paid by salaries instead of fees, or in any manner other than is provided by this act; and if her Majesty shall be pleased, with the advice aforesaid, to make such order, or to order that any such court shall be abolished, or that the district for which any such court is holden shall be consolidated with any other district, or if any act shall be passed whereby it shall be provided that the said courts or any of them shall be abolished, or otherwise constituted than is provided by this act, no such clerk or bailiff, nor any judge, county clerk, treasurer, or other officer of any such court, shall be entitled to any compensation on account of ceasing to hold his office, or to receive the fees allowed by this act, or on account of his emoluments being affected by such abolition or alteration, unless he shall have presided or acted as judge, assessor, county clerk, treasurer, clerk, bailiff, or other officer, before the passing of this act, in any of the courts mentioned in the schedule (A.) to this act annexed, in which case he shall be entitled to compensation for the loss of his fees or emoluments, in like manner and subject to the same regulations as he would have been entitled thereto under the provisions herein contained in case he had been deprived of any fees or emoluments by reason of the passing of this act; and in such case all sums payable in the name of fees to such officers of the court as shall be paid by salaries shall be paid from time to time to the treasurer of the court, who shall pay the said several salaries out of the proceeds of such fees, and the surplus shall form part of the general fund of the court; and whenever the net amount of the fees shall not be sufficient to pay the said several salaries, the deficiency shall be made good and paid out of the consolidated fund of Great Britain and Ireland.

40. *Limiting amount of salaries to be paid under this act.*—And be it enacted, That the greatest salaries to be received in any case by the judges and clerks of the courts holden under this act shall be 1200*l.* by a judge, and 600*l.* by a clerk, exclusive of all salaries to his clerks employed in the business of the court, and other expenses incidental to his office, unless in the case of any judge or clerk of any such court acting in the same capacity before the passing of this act in any court mentioned in the said schedule (A.) whose salaries shall not be limited to any sum less than the average amount of the fees and emoluments of their re-

spective offices during the seven years next before the passing of this act: Provided always, that it shall be lawful for the commissioners of her Majesty's treasury to allow in each case such sum as they shall in each case deem reasonable to defray travelling expenses, with reference to the size and circumstances of each district.

41. *Fees and fines to be accounted for to treasurer.*—And be it enacted, That the clerk of every court holden under this act, from time to time as often as he shall be required so to do by the treasurer or judge of the court, and in such form as the treasurer or judge shall require, shall deliver to the treasurer a full account in writing of the fees received in that court under the authority of this act, and a like account of all fines levied by the court, and of the expenses of levying the same, and shall pay over to the treasurer, quarterly or oftener in every year, by order of the court, the monies remaining in his hands over and above his own fees, and such balance as he shall be allowed by order of the court to retain for the current expenditure of the court.

42. *Clerk's accounts to be audited and settled by treasurers.*—And be it enacted, That the treasurer of every court holden under this act shall from time to time, quarterly or oftener, as shall be directed by order of the court, audit and settle the accounts of the clerk and other officers of the court, and shall receive the balance of the various monies which such clerk and other officers shall have received under this act, and shall pay over to the judge of the court the amount of his fees, and make all such other payments as it shall be requisite to make thereon in accordance with the provisions of this act, and shall from time to time pay the balance remaining in his hands, or so much thereof as he shall be directed to pay, into such bank, or otherwise as shall be directed by the commissioners of her Majesty's treasury.

43. *Treasurer of the court to render accounts to audit board.*—And be it enacted, That the treasurer of every court holden under this act shall once in every year, and oftener if required, on such day as the commissioners of her Majesty's treasury from time to time shall appoint, render to the commissioners for auditing the public accounts of Great Britain a true account in writing of all monies received and of all monies disbursed by him on account of every court holden under this act of which he is treasurer during the period comprised in such account, in such form, and with such particulars of receipt and disbursement, or otherwise, as the said commissioners of audit shall from time to time require.

44. *Commissioners of treasury to direct how balances shall be applied.*—And be it enacted, That the commissioners of her Majesty's treasury shall from time to time make such rules as to them shall seem meet for securing the balances and other sums of money in the hands of any officers of every court holden under this act, and for the due accounting for and application of all such balances and other sums of money.

45. *Accounts of treasurers to be audited under powers of 25 G. 3, c. 52.*—And be it enacted, That the accounts to be kept by the several treasurers on account of the said courts shall be examined and audited by the commissioners for auditing the public accounts of Great Britain, under the powers vested in them under an act of the 25 G. 3, c. 52, intituled "An Act for the better examining and auditing the Public Accounts of this Kingdom," and under any act now in force, or otherwise howsoever, except so far as the same are varied by this act.

46. *Clerk to send to commissioners of audit an account of all sums paid by him to treasurer.*—And be it enacted, That the clerk of every such court shall once in every year, and oftener if required, on such day as shall be appointed by the commissioners of her Majesty's treasury, make out and send to the said commissioners of audit an account of all sums paid over by him to the treasurer of the court, including all unclaimed balances carried to the account of the general fund, as hereinafter provided; and every such account, duly vouched by receipts given under the hand of the treasurer, shall be a voucher to charge the treasurer in his account before the said commissioners of audit.

47. *Accounts when audited to be sent to treasury.*—And be it enacted, That it shall not be necessary to declare the accounts of the said treasurers before the Chancellor of the Exchequer, but the said commissioners of audit shall transmit a statement of every account examined and audited by them under the authority of this act to the Lord High Treasurer, or the commissioners of her Majesty's treasury for the time being, who, having considered such statement, shall return the same to the commissioners of audit, together with his or their warrant, directing them to make up and pass the account, either conformably to the statement, or with such variations as he or they may deem just and reasonable; and the account having been made up pursuant to such directions, and signed by two or more of the said commissioners for auditing the public accounts, shall remain deposited in the audit office, and shall have the same force and validity, and be as efficient in law for all purposes whatsoever, as if the same had been declared according to the usual course by the Chancellor of the Exchequer; and the said commissioners shall thereupon, as soon as conveniently may be, cause such or the like certificate thereof, in the nature of a quietus, to be made out and delivered as is now practised by them with regard to declared accounts, and which shall be equally valid and effectual to discharge the accountants, and to all other intents and purposes.

48. *Treasurers, with approval of Secretary of State, to provide court houses, offices, &c.*—And be it enacted, That the treasurer of any court holden under this act for which a court house and offices, with necessary appurtenances, shall not have been already provided, or where such

court house and offices are inconvenient or insufficient, shall, as soon as conveniently may be, with the approval of one of her Majesty's principal Secretaries of State, build, purchase, hire, or otherwise provide messuages and lands, with all necessary appurtenances, fit for holding the court therein, and for the offices necessary for carrying on the business of the said court, or, instead of providing separate buildings, may, with the like approval, contract with any person, being the owner of or having the control and management of any county or town hall or other building, for the use and occupation thereof, or of so much thereof as may be needed for the purposes of this act, and subject to such annual rent, and to such conditions as to the repairs, alterations, or improvements of such hall or building, as may be agreed upon; and all lands, messuages, and other real and personal estates and effects belonging to the court shall vest in the treasurer for the time being, and in his successors in that office, in trust for the purposes of this act.

49. *Where common gaols are inconvenient, prisons belonging to courts under acts cited in schedules (A.) and (B.) may be used.* 5 & 6 Vict. c. 98.—And be it enacted, That it shall be lawful for any court holden under this act, with the approval of one of her Majesty's principal Secretaries of State, to use as a prison for the purposes of this act any prison now belonging to any court holden under any of the acts cited in the said schedules (A.) and (B.), in all cases where it shall appear to the said Secretary of State that the common gaol or house of correction of the county, district, or place in which the court is established is inconveniently situated, or is not applicable for the use of the said courts; and whenever any such prison shall be so allowed to be used it shall be deemed one of the common gaols of the county for which it shall be used, as if it had been provided, after presentment of the insufficiency of one common gaol for such county, under the provisions of an act passed in the 5 & 6 Vict. c. 98, intituled "An Act to amend the Laws concerning Prisons," or where such prison shall be situated within a borough having a separate court of sessions of the peace, it shall be deemed a house of correction for such borough.

50. *Power for purchasing land.*—And be it enacted, That the provisions of the Lands Clauses Consolidation Act, 1845, shall apply to the purchase of lands by the treasurer of any such court for the purposes of this act, except so much thereof as relates to the purchase and taking of lands otherwise than by agreement; and in construing the said act the treasurer acting with the approval of one of her Majesty's principal Secretaries of State shall be deemed the promoter of the undertaking for which such lands are required.

51. *Treasurer empowered to borrow money for the purposes of this act.*—And be it enacted, That for the purpose of defraying the expenses of building, purchasing, or providing any messuages and lands for the purposes aforesaid,

it shall be lawful for the said treasurer to borrow and take up at interest so much money as he shall find to be necessary, the amount thereof, and the rate of interest in each case, being first allowed by the said commissioners of her Majesty's treasury; and the treasurer may enter into and execute such securities as may be required, and the securities so entered into shall be binding on him and his successors in the office of treasurer for securing repayment of the monies borrowed, with interest for the same, out of the general fund hereinafter mentioned, and shall enter in a book belonging to the court, to be kept by him for that purpose, the names of the several persons by whom any money shall be advanced for the purpose aforesaid, in the order in which the same shall be advanced, and the monies so borrowed shall be paid off in the same order.

52. *A general fund to be raised for paying off money borrowed.*—And be it enacted, That for raising a fund for providing a court house and offices, and for paying off any monies which may be borrowed as aforesaid, and the interest due in respect thereof, the clerk of every court holden under the authority of this act, in which and while it shall be necessary to raise such fund, shall demand and receive from the plaintiff in any suit brought in that court the sum of 6d. when the debt or damage claimed shall exceed 20s. and shall not exceed 40s., and for every claim exceeding 40s. one twentieth part thereof, neglecting any sum less than 6d. in estimating such twentieth part, or such other sum in either case, not exceeding the rates herein-before mentioned, as one of her Majesty's principal Secretaries of State, with the consent of the commissioners of her Majesty's treasury, from time to time shall order, which sum, if not paid in the first instance by the plaintiff upon suit brought in the court, may be deducted from the sum recovered for the plaintiff, and shall be considered as costs in the cause; and the clerk of the court shall keep an account of all monies so paid to him, and shall pay over the amount from time to time to the treasurer of the court, and the amount thereof shall accumulate, to form a fund to be called "The General Fund of the County Court of \_\_\_\_\_," and shall be applied in the first place toward paying the interest of the several sums so borrowed, and in the second place toward paying the rent and other expenses necessarily incurred in holding the court, and in the third place toward paying off the several principal sums borrowed, in the order in which they were borrowed, and in the fourth place, toward defraying the other expenses herein charged on the said general fund, in such manner as the judge, with the approval of one of her Majesty's principal Secretaries of State, shall direct; and the surplus which shall from time to time accumulate, after providing for all the said expenses, shall be paid over to the credit of the consolidated fund of the United Kingdom of Great Britain and Ireland; subject, nevertheless, to any charge which may arise from any future deficiency of the same fund.

**53. *Property of courts in schedules (A.) and (B.) to vest in the treasurer of the county court.***

—And be it enacted, That, as soon as a court shall have been established in any district under this act, all messuages, lands and tenements, and all real estates and effects, vested in or belonging to the commissioners, clerks, treasurers, trustees, or other officers of any of the courts mentioned in the said schedules (A.) and (B.), which were holden in trust for the purposes of such court, shall vest in or belong to the treasurer of the county court for the time being, and his successors in the said office, in trust for the purposes of this act, for the like estate and interest, and subject to all the covenants, conditions, and agreements on which the same were respectively holden; and the said commissioners, clerks, treasurers, trustees, and other officers, their heirs, executors, and administrators, shall be freed and discharged from all such covenants, conditions, and agreements, and from the consequences of their being unable to fulfil any covenants or agreements into which any of them may have lawfully entered in execution of the provisions of any of the said acts, on or before the repeal of such act, with respect to their estate or interest in such messuages, lands, tenements, real and personal estates and effects, in consequence of the vesting thereof in the said treasurer; and all monies and securities for money, and other property and effects of any kind whatsoever, in the hands of the commissioners, clerks, treasurers, trustees, or other officers of any such court, shall be paid, transferred, and delivered to the said treasurer, or to such person as he shall appoint to receive the same, and shall be applied in discharging all claims and demands to which the same were liable in the hands of such commissioners, clerks, treasurers, trustees, or other officers, and the residue thereof shall be applied to the same purposes to which the general fund is applicable.

**54. *Provisions for outstanding liabilities.***

—And be it enacted, That it shall be lawful for the treasurer of the county court, with the approval of the commissioners of her Majesty's treasury, and upon the certificate of the expediency thereof under the hand of the judge, to sell and dispose of all messuages, lands, and tenements which may be vested in him under the provisions of this act which shall not be needed for the purposes of this act, or which the treasurers shall think ought to be sold, for the purpose of better enabling him to discharge any just debts on account of any court of which the constitution shall be altered under this act, or to provide other and more convenient buildings for holding a county court; and the proceeds of all such sales, and also all monies and securities for money which shall be paid, transferred, or delivered to him on account of any such court as aforesaid, shall be applied towards discharging such debts; and in every case in which at the time of the alteration of the constitution of the court there shall be any just debts owing on account of any such court, or any salaries or annuities legally

or equitably chargeable upon or payable out of the fees of such court, or out of any fund to which such fees are payable, over and above what may be discharged by the monies and effects so paid, transferred, or delivered to the treasurer on account of such court, and over and above the proceeds of the sale of any such messuages, lands, and tenements, in case the same or any part thereof shall be sold, such debts, salaries, and annuities shall be treated as if they were debts which had been incurred for the purpose of providing a court house for holding the county court for the district in which the place is included where such court was holden, and shall be liquidated out of the general fund herein-before mentioned, if the same shall be sufficient for that purpose, and any deficiency therein shall be paid out of the consolidated fund of the United Kingdom of Great Britain and Ireland.

**55. *Clerks to have the charge of the court houses, &c., and to appoint and dismiss servants, &c.***

—And be it enacted, That the clerk of every court shall have the care of the court house and offices of the court, and shall appoint and have power to dismiss the necessary servants for taking charge of such court house and offices, at such salaries as shall be from time to time authorized by the judge, with the consent of the commissioners of her Majesty's treasury; and the clerk of the court, under the direction of the said commissioners, and subject to such regulations as they may require to be enforced, shall make all necessary contracts or otherwise provide for repairing and furnishing, and for cleaning, lighting, and warming, the said court house and offices, and for supplying the said court and offices with law and office books and stationery, and for defraying all other necessary expenses not otherwise provided for incident to the holding of the said court, and the charge of the court house and offices, and expenses thereby incurred, shall be paid out of the general fund of the court: Provided always, that the treasurer or clerk of any court, or the partner of any such treasurer or clerk, or any person in the service or employment of any such treasurer or clerk, shall not be directly or indirectly concerned or interested in any such contract, or in supplying any articles for the use of the said courts and offices: Provided also, that no payment for any such charge shall be allowed in the clerk's accounts until allowed under the hand of the judge.

**56. *Judge to hold the court where her Majesty shall direct. Notices for holding courts to be put up in a conspicuous place.***

—And be it enacted, That the judge of each district shall attend and hold the county court at each place where her Majesty shall have ordered that the county court shall be holden within his district at such times as he shall appoint for that purpose, so that a court shall be holden in every such place once at least in every calendar month, or such other interval as one of her Majesty's principal secretaries of state shall in each case order; and notice of the days on which the court shall be holden shall be put

up in some conspicuous place in the court house and in the office of the clerk of the court, and no other notice thereof shall be needed; and whenever any day so appointed for holding the court shall be altered, notice of such intended alteration, and of the time when it will take effect, shall be put up in some conspicuous place in the court house and in the clerk's office.

57. *Process of the court to be under seal.*—And be it enacted, That for every court holden under this act there shall be made a seal of the court, and all summonses and other process issuing out of the said court shall be sealed or stamped with the seal of the court; and every person who shall forge the seal or any process of the court, or who shall serve or enforce any such forged process, knowing the same to be forged, or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said court, knowing the same to be false, or who shall act or profess to act under any false colour or pretence of the process of the said court, shall be guilty of felony.

58. *Jurisdiction of the court.*—And be it enacted, That all pleas of personal actions, where the debt or damage claimed is not more than twenty pounds, whether on balance of account or otherwise, may be holden in the county court, without writ; and all such actions brought in the said court shall be heard and determined in a summary way in a court constituted under this act, and according to the provisions of this act: Provided always, that the court shall not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or breach of promise of marriage.

59. *Suits to be by plaint.*—And be it enacted, That, on the application of any person desirous to bring a suit under this act, the clerk of the court shall enter in a book to be kept for this purpose in his office a plaint in writing, stating the names and the last known places of abode of the parties, and the substance of the action intended to be brought, every one of which plaints shall be numbered in every year according to the order in which it shall be entered; and thereupon a summons, stating the substance of the action, and bearing the number of the plaint on the margin thereof, shall be issued under the seal of the court according to such form, and be served on the defendant so many days before the day on which the court shall be holden as which the cause is to be tried, as shall be directed by the rules made for regulating the practice of the court, as hereinafter provided; and delivery of such summons to the defendant, or in such other manner as shall be specified in the rules of practice, shall be deemed good service; and

no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known.

60. *Summons may issue, though cause of action may not arise in the district.*—And be it enacted, That such summons may issue in any district in which the defendant or one of the defendants shall dwell or carry on his business at the time of the action brought; or, by leave of the court for the district in which the defendant or one of the defendants shall have dwelt or carried on his business, at some time within six calendar months next before the time of the action brought, or in which the cause of action arose, such summons may issue in either of such last-mentioned courts.

61. *Processes out of district of court may be served by bailiff of any other court.*—And be it enacted, That any summons or other process which under this act shall be required to be served out of the district of the court from which the same shall have issued may be served by the bailiff of any court holden under this act in any part of *England*, and such service shall be as valid as if the same had been made by the bailiff of the court out of which such summons or other process shall have issued within the jurisdiction of the court for which he acts.

62. *Proof of service of process out of the district, or in the absence of the bailiff.*—And be it enacted, That service of any summons or other process of the court which shall require to be served out of the district of the court may be proved by affidavit, purporting to be sworn before any judge of a county court, or before a master extraordinary in Chancery, or any person now authorized by law to take affidavits; and the fee for taking such affidavits shall not be more than one shilling, and shall be costs in the cause; and in every case of the unavoidable absence of the bailiff by whom any summons or other process of the court shall have been served the service of such summons or other process may be proved, if the judge shall think fit, in the same manner as a summons served out of the district of the court, but without additional charge to either of the parties to the suit.

63. *Demands not to be divided for the purpose of bringing two or more suits.*—And be it enacted, That it shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said courts, but any plaintiff having cause of action for more than twenty pounds, for which a plaint might be entered under this Act if not for more than twenty pounds, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding twenty pounds; and the judgment of the court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

64. *Minors may sue for wages.*—And be it

enacted, That it shall be lawful for any person under the age of 21 years to prosecute any suit in any court holden under this act for any sum of money not greater than 20*l.* which may be due to him for wages or piecework, or for work as a servant, in the same manner as if he were of full age.

65. *Cases of partnership and intestacy.*—And be it enacted, That the jurisdiction of the county court under this act shall extend to the recovery of any demand, not exceeding the sum of 20*l.*, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributed share under an intestacy, or of any legacy under a will.

66. *Executors may sue and be sued.*—And be it enacted, That it shall and may be lawful for any executor or administrator to sue and be sued in any court holden under this act in like manner as if it were a party in his own right and judgment, and execution shall be such as in the like case would be given or issued in any superior court.

67. *No privilege allowed.*—And be it enacted, That no privilege, except as hereinafter excepted, shall be allowed to any person to exempt him from the jurisdiction of any court holden under this act.

68. *One of several persons may be sued.*—And be it enacted, That where any plaintiff shall have any demand recoverable under this act against two or more persons jointly answerable, it shall be sufficient if any of such persons be served with such process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued, or may not have been within the jurisdiction of the court; and every such person against whom judgment shall have been obtained under this act, and who shall have satisfied such judgment, shall be entitled to demand and recover in the county court under this act contribution from any other person jointly liable with him.

69. *Judge alone to determine all questions, unless a jury be summoned.*—And be it enacted, That the judge of the county court shall be the sole judge in all actions brought in the said court, and shall determine all questions as well of fact as of law, unless a jury shall be summoned as herein-after mentioned; and no snitors shall in any case be summoned to hold or have any jurisdiction in any court holden under this act.

70. *Actions may be tried by a jury when parties require it.*—And be it enacted, That in all actions where the amount claimed shall exceed 5*l.* it shall be lawful for the plaintiff or defendant to require a jury to be summoned to try the said action; and in all actions where the amount claimed shall not exceed 5*l.* it shall be lawful for the judge, in his discretion, on the application of either of the parties, to order that such action be tried by a jury; and in every case such jury shall be summoned according to the provisions herein-after con-

tained: Provided always, that the party requiring a jury to be summoned shall give to the clerk of the court, or leave at his office, such notice thereof as shall be directed by the rules made for regulating the practice of the court as herein-after provided; and the said clerk shall cause notice of such demand of a jury, made either by the plaintiff or defendant, to be communicated to the other party to the said action, either by post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for either party to prove on the trial that such notice was communicated to the other party by the clerk.

71. *Party requiring jury to make a deposit.*—And be it enacted, That every party requiring any jury to be summoned shall at the time of giving the said notice, and before he shall be entitled to have such jury summoned, pay to the clerk of the court the sum of 5*s.* for payment of the jury, and such sum shall be considered as costs in the cause, unless otherwise ordered by the judge.

72. *Who shall be jurors.*—And be it enacted, That the sheriff of every county, and the high bailiffs of Westminster and Southwark, shall cause to be delivered to the clerk of the court a list of persons qualified and liable to serve as jurors in the courts of assize and *nisi prius* for their county, city, and borough respectively, within fourteen days from the receipt of the jury book from the clerk of the peace of the county, or other officer, each list containing only the names of persons residing within the jurisdiction of the court, for which list the said sheriffs and high bailiffs shall be entitled to receive out of the general fund of the court a fee after the rate of 2*d.* for every folio of seventy-two words; and whenever a jury shall be required the clerk of the court shall cause so many of the persons named in the list as shall be needed in the opinion of the judge to be summoned to attend the court at a time and place to be mentioned in the summons, and shall administer or cause to be administered to such of them as shall be impanelled to try any cause or causes an oath to give true verdicts according to the evidence; and the persons so summoned shall attend at the court at the time mentioned in the summons, and in default of attendance shall forfeit such sum of money as the judge shall direct, not being more than 5*l.* for each default; and the delivery of such summons to the person whose attendance is required on such jury, or delivery thereof to his wife or servant, or any inmate at his usual place of abode, trading, or dealing, shall be deemed good service: Provided always, that no person shall be summoned or compelled to serve on such jury more than twice within one year, or who shall have been summoned and shall have attended upon any jury at the assizes, or any court of *nisi prius*, or at the central criminal court for the same county, within six calendar months next before the delivery of such summons.

73. *Number of the jury.*—And be it enacted,



That whenever there are any jury trials, five jurymen shall be impanelled and sworn, as occasion shall require, to give their verdicts in the causes which shall be brought before them in the said court, and being once sworn, shall not need to be re-sworn in each trial; and either of the parties to any such cause shall be entitled to his lawful challenge against all or any of the said jurors in like manner as he would be entitled in any superior court; and the jurymen so sworn shall be required to give an unanimous verdict.

74. *Proceedings on hearing the plaint.*—And be it enacted, That on the day in that behalf named in the summons the plaintiff shall appear, and thereupon the defendant shall be required to appear to answer such plaint; and on answer being made in court the judge shall proceed in a summary way to try the cause, and give judgment, without further pleading or formal joinder of issue.

75. *No evidence to be given that is not in summons.*—And be it enacted, That no evidence shall be given by the plaintiff on the trial of any such cause as aforesaid of any demand or cause of action, except such as shall be stated in the summons hereby directed to be issued.

76. *Notices to be given to the clerk of special defences, who shall communicate the same to the plaintiff.*—And be it enacted, That no defendant in any court holden under this act shall be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff, or to set up by way of defence and to claim and have the benefit of infancy, coverture, or any statute of limitations, or of his discharge under any statute relating to bankrupts, or any act for relief of insolvent debtors, without the consent of the plaintiff, unless such notice thereof as shall be directed by the rules made for regulating the practice of the court shall have been given to the clerk of the court; and in every case in which the practice of the court shall require such notice to be given, the clerk of the court shall, as soon as conveniently may be, after receiving such notice, communicate the same to the plaintiff by the post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the clerk.

77. *Suits may be settled by arbitration.*—And be it enacted, That the judge may in any case, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the court in dispute between such parties, to be referred to arbitration, to such person or persons, and in such manner, and on such terms as he shall think reasonable and just; and such reference shall not be revocable by either party, except by consent of the judge; and the award of the arbitrator or arbitrators or umpire shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the judge; provided that the judge may, if he think fit, on application to him at the first

court held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid.

[The remainder of this Act will be given in our next.]

## SELECTIONS FROM CORRESPONDENCE.

### MEDICAL EVIDENCE.

SIR,—In page 361, *ante*, of the *Legal Observer*, I read with much interest the article under the head "Medical Jurisprudence," detailing the particulars of the case tried at Guildford on the 1st August, which, as you justly observe, shows the necessity of exercising great caution in giving weight to speculative medical testimony. I was present at the trial, and sat by the side of the prisoner's counsel, and was much interested in the event, and though the evidence appeared circumstantially, though somewhat inferentially, conclusive against the unfortunate young woman, I was convinced in my own mind of her innocence, and subsequent conversation with her after her acquittal strengthened my conviction, that the unhappy event was the effect of pure mistake, and it appeared as though Providence interposed at the dreadful moment of suspense when the almost damning test was produced by the medical man, in a manner, (I should be considered uncharitable, perhaps, if I used the word triumph,) but certainly of great excitement, for the purpose of establishing the evidence of her guilt. The adroitness of the prisoner's counsel, from his great anxiety on behalf of his unfortunate client, in completely overthrowing the chemical test made by a man of 15 years' experience, deserves no small commendation, and I think it only just to the learned gentleman, that your readers should be acquainted with his name. It was Mr. J. Locke of the Home Circuit, and a source of high gratification to him must be the reflection that his exertions of that day, perhaps saved a fellow-creature, who stood mute and powerless at her country's bar, from the ignominious murderer's death.

4, Raymond's Buildings.

C. F. C.

[In the "Letter Box" at p. 424, we requested to hear from the correspondent who sent us the report, as we had an impression that it was the attorney who suggested the test in question, and we wished to give his name as well as that of the counsel.—Ed.]

### ASSIGNMENT OF LEASE.—FORFEITURE.

A LEASE for years contains a proviso for re-entry, "if the lessee, his executors, &c. shall assign this indenture of lease or demise the said premises or any part thereof, for all or any part of the said term, without the consent in writing of the lessor, his heirs or assigns."

The lessee grants an under-lease, and in another and a smaller case assigns by way of mortgage,—will such under-lease or assignment operate as a forfeiture of the lease?

CIVIS, A.\*

COPYHOLDS.—DEPUTATION.

Is a lord or steward of a manor compellable to take a surrender of copyholds by power of attorney, or can he require a deputation to be had for passing the surrender?

CIVIS, A.

NOTICES OF LAW REFORM FOR THE NEXT SESSION.

Mr. Romilly.—To call the attention of the house to the fees paid by the suitors in the various courts, and generally to the mode of defraying the expenses of the administration of justice throughout the country.

Mr. Aglionby.—Bill further to amend "the acts for facilitating the enfranchisement of copyhold and customary lands, and for the improvement of such tenure," by providing that such enfranchisement shall be compulsory.

Mr. Ewart.—To move the total repeal of the punishment of death.

Mr. Pusey.—Bill to remove doubts as to the power of owners of settled estates to grant tenant rights on their farms.

Mr. Aglionby.—Bill to amend the acts to facilitate the enclosure of commons, by providing that all lands allotted under them shall be freehold, whatever the tenure of the lands in respect of which the allotments be made.

Mr. Bright.—Bill to amend the game laws.

Mr. Pusey.—Bill to enable occupiers of land to recover damages for injury inflicted by game on their crops.

Mr. Wakley.—Bill to provide for the registration in Great Britain and Ireland of all legally qualified practitioners in medicine and surgery.

Mr. Poulett Scrope.—Bill to exempt from poor-rate the occupiers of tenements under the value of 5*l.* per annum in rural, and 8*l.* in town districts, if certified by the medical officer of the district to be well drained and otherwise kept in good sanitary condition.

Mr. Poulett Scrope.—To move resolutions to the effect, that the main principle of English poor-law be extended to Ireland, but relief not limited to admission into a workhouse.

Mr. Ewart.—To move that committees on all private bills consist of five members, neither personally nor indirectly concerned in the question submitted to their consideration.

Mr. R. Yorke.—To move that the same constitution and regulations now adopted with regard to committees on railway bills be applied to committees on all private bills.

[Lords Brougham and Campbell will, no

doubt, largely add to this List at the commencement of the sessions.

The Lord Chancellor also will very probably bring forward his amendment of the Law of Debtor and Creditor.]

RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Vice-Chancellor Knight Bruce.

*Ex parte Bartlett.* June 30, July 3 & 4.

COSTS.—CUSTODY OF INFANTS' ACT, 2 & 3 VICT. C. 54.—FORM OF ORDER.

*Whether the court has jurisdiction, under the Custody of Infants' Act. (2 & 3 Vict. c. 54.) to give costs, quære?*

A PETITION was presented, under the 2 & 3 Vict. c. 54, by the wife of a clergyman, by her brother, and her next friend, alleging, disagreements between the husband and wife, by reason of which she had gone away to reside with her own family. The husband had, at first, withdrawn himself, and after a short time, had renewed cohabitation, which was subsequently discontinued. It appeared that there were six children of the marriage, all of whom were infants, the two youngest being under seven years of age, and they, with the others, being in the custody of the husband. The petition prayed, that the husband might be ordered to deliver the two youngest children, namely, Stephen, aged nearly four years, and Emily Louisa, aged one year and eight months, until they should attain the age of seven years, subject to such regulations as the court might deem just and convenient; that the husband might be ordered to allow the mother to have access to the other four children, at such times and subject to such regulations as the court might deem proper, and that the husband might be ordered to pay the costs of the petition.

Mr. Swanston and Mr. Sheffield for the petitioners. Mr. Wigram and Mr. Shebbeare for the respondents.

Vice-Chancellor Bruce, (after commenting upon the merits of the case.) "I asked, after the petition was heard, whether the father would give the custody of the youngest boy to the mother, but, for reasons which he gave, that was declined. The order must be, that Mr. T. Boulton, Mr. P. Boulton, and Mrs. Bartlett, undertaking to take proper care of, and to provide in proper manner for the education and maintenance of Emily Louisa Bartlett, Mr. Bartlett do, at six o'clock this evening, deliver her to Mr. Thomas Boulton, he undertaking forthwith to deliver her safely to her mother, and to let the child remain in that lady's custody, until she attain the age of seven years, or during such shorter time as the court may direct. The infant must not be removed from Clapton, (the mother's residence,) without leave of the court, except for occasional visits for

\* See *Dumpe's Case*, p. 45, ante, and the cases there cited. *Ed.*

change of air and for health to the coasts of England, or to any place in the country, not exceeding 120 miles from London; and on every change of residence, notice by letter, sent by post, to be given to the father. Mr. Bartlett, or some member of his family deputed by him, to have access to the child once in every six weeks, such interviews not to exceed two hours in duration, and to take place between the hours of ten in the forenoon and four in the afternoon, at the house of Mrs. Bartlett the elder, the mother of Mr. Bartlett, if she consents that the child be sent there in the care of some responsible person to be appointed by the mother, who shall bring the child back to the mother, Mr. Bartlett undertaking not to interfere with, or oppose, or obstruct, its return. But in case Mrs. Elizabeth Bartlett shall not consent to such interviews taking place at her house, then Mr. Bartlett is to have access to the infant at the house where his wife may be then residing, and there, in the presence of some responsible person, to be appointed as before mentioned. Mrs. Bartlett is to have access to the other five children once in every six weeks, the visits to be of similar duration, and within the hours before mentioned concerning the father's interview with Emily Louisa, and to take place so long as the five children shall reside at or within two miles of Leominster, (the father's present residence,) or its suburbs, at some respectable place to be appointed from time to time by Mrs. Bartlett, at or within two miles of Leominster, and, if resident elsewhere, (except at or within one mile of Clapton,) then to take place at some respectable house at or within one mile of the place where they are resident, to be appointed by Mrs. Louisa Bartlett; but, if resident or visiting at or within one mile of Clapton, then the five children to be brought to the then residence of their mother, under the care of some responsible person, to be appointed by Mr. Bartlett, such person to bring them back to their father, and Mr. Bartlett not to be present at any of the interviews, or to molest or annoy his wife upon any of these occasions. In case of the illness of the youngest child, Emily Louisa Bartlett, notice to be given by letter by post to Mr. Bartlett, and if he shall be dissatisfied with the medical attendance, then he is to be at liberty to apply to the court. The infant to be brought up as a member of the Church of England. Reserve the question, whether the court has jurisdiction, under this act of parliament, to give costs, and if it has, the question must be reserved, whether in this case the court ought to give them."

Vice-Chancellor Wigram.

*Leaden v. Lewin.* May 7.

PRELIMINARY INQUIRIES.—ORDER 5, MAY, 1839.—INFANT HEIR-AT-LAW.

*Where a creditor and administrator of an intestate, in his double character, filed a bill against the infant heir-at-law, for the purpose of making the real estate contribute*

*towards the deficiency of the personality, the court refused to direct, under the 5th order of the 9th May, 1839, preliminary accounts and inquiries, upon the ground, that it would be unjust, in such a suit and before answer, to throw the onus of taking the accounts upon the heir-at-law.*

*Proper course to be taken under such circumstances.*

Mr. Eade moved, under the 5th order of May, 1839, for a reference to the Master to take preliminary accounts and inquiries. The facts are stated in his Honour's judgment.

Vice-Chancellor Wigram. In this case a gentleman dies intestate. His creditor files a bill; and, there being no personal representative, the creditor himself has taken out administration to the estate of the deceased. He makes as a defendant to the suit the heir-at-law. He says, the real estate is responsible to him in satisfaction of his debt, or so much as the personal estate turns out to be insufficient to pay. Having filed his bill, I am asked before answer, to make an order, under the 5th order of May, 1839, referring it to the Master to take preliminary accounts as between the creditor and the heir-at-law. I am to consider whether, in a suit so framed, such an inquiry would be proper. The difficulty is this: the right of the creditor is to go against the personal estate, in the first instance, and, if that is insufficient, then to go against the real estate. He has a right to bring the representatives before the court, that the heir-at-law may have an opportunity of seeing whether the personal estate is really insufficient to pay the debt. The plaintiff in this case happens to fill the double character of creditor and personal representative. The most favourable way of putting the case is, to suppose that the creditor and the personal representative, as different parties, may join as plaintiffs in the suit. Is it right, as against the heir-at-law, whose interests I am to consider, to direct preliminary inquiries? The first contest must be between the creditor and the personal representative. It is not alone the duty of the heir-at-law to prosecute that inquiry, although the accounts must be taken in his presence. The creditor and the personal representative being co-plaintiffs, I cannot direct the inquiry to be taken as between those two, there being no one whatever to prosecute the accounts of the personal estate in the Master's office. All I can say is, that the personal representative submits to account to the estate of the heir-at-law, if the latter thinks proper to initiate the account; but I cannot say, that I will compel the heir-at-law to have that course taken. As no debt is proved, in strictness, I ought not to direct the accounts to be taken. I cannot consider the representative as *bona fide* admitting the debt. I have often taken this course: if I find the debt is proved against the personal representative, I make the usual decree for the account, because it is not to be proved over again. I am not quite clear that even that should be done, when the heir-at-law resists it. I think

the only course is, to get some other creditor to initiate the proceeding, and make such creditor a defendant in the suit, and then apply to have inquiries directed; but I cannot, in the exercise of a discretion which is governed by no rule at all, where no debt is proved, subject the estate of the heir-at-law, especially where the heir is an infant, and the personal estate insolvent, to the expense and inconvenience of having accounts taken in a suit so framed against himself. I can lay down no rule.

**Queen's Bench.**

*Lewis v. Samuel.* Easter Term, 1846.

**ASSUMPSIT.—ATTORNEY.—NEGLIGENCE.**

*An attorney being employed to conduct a prosecution, gave an undertaking that he would not charge full fees, but that he would only charge the money actually expended in conducting the business. In consequence of the negligent conduct of the attorney the indictment failed.*

*Held, that he could not, under such circumstances, recover back the money so expended.*

THIS was an action of assumpsit, tried before Mr. Justice Wightman, on an attorney's bill, and a verdict was found for the plaintiff for 38*l*. Lewis had been employed as an attorney for the plaintiff in an action of *Samuel v. Isaacs*, and in the course of that cause certain facts were sworn to in an affidavit which were alleged not to be true, and a prosecution for perjury was instituted. Lewis was employed to conduct the prosecution, and he gave an undertaking to Samuel, that for the business done in respect of the prosecution he would not charge full costs, but he would be content to be paid the money actually expended. The indictment failed because the Christian name of the commissioner, before whom the affidavit was sworn, was not properly stated, and it appeared in evidence that Lewis had been guilty of great negligence in not making proper exertions in order to ascertain the correct name of the commissioner. The present action was brought to recover the money actually expended in conducting the prosecution, as well as for work done unconnected with this transaction. The jury, under the direction of the learned judge, being of opinion that Lewis had been guilty of gross negligence in conducting the prosecution for perjury, did not include in their verdict any part of the claim made in that respect.

Mr. Watson now moved for a rule to show cause why the verdict should not be increased by the amount of the sum expended by the plaintiff in respect of this prosecution. This is money expended under a contract, and is distinguishable from the cases of *Hill v. Featherstonhaugh*,<sup>a</sup> and *Shaw v. Arden*,<sup>b</sup> where it has been held that an attorney cannot charge for work which is useless towards accomplish-

ing the object his client has in view: those cases only apply where an attorney seeks to recover remuneration for his work and labour, and not to a case like the present, where he only seeks to reimburse himself the money he has expended in conducting the prosecution for the defendant. [Lord Denman, C. J. If he loses his labour in the one case, why should he not lose his money in the other?] The case stands on the same principle as that of a bailee without reward, and the plaintiff is entitled to recover.

Lord Denman, C. J. I do not think that there is any ground for granting this application; by reason of the gross negligence of the plaintiff the work in respect of which this claim is made has become entirely useless to the defendant.

*Patteson, Williams, and Wightman, J.'s concurred.*

Rule refused.

**Exchequer.**

*Lambe v. Smythe.* Easter Term, May 8.

**PLEA IN ABATEMENT.—AFFIDAVIT OF RESIDENCE.**

*The word "residence," in the 3 & 4 W. 4, c. 42, s. 8, means "domicile" or "home;" therefore, where a plea in abatement for nonjoinder of a co-contractor was verified by an affidavit stating that the party resided at a certain place which was in fact his home, Held, that the statute had been complied with, although the party was not then living there, but had gone abroad for a short time.*

THIS was an action against one of the provisional committee of the "Trinidad Great Eastern and South-Western Railway Company," to recover the price of advertisements inserted in a newspaper. The defendant pleaded in abatement the nonjoinder of other co-contractors, amongst whom was Sir G. Rich. The plea was verified by an affidavit stating that Sir G. Rich resided at 43, Lowndes Street, Belgrave Square.

A rule nisi had been obtained to set aside the plea, on the ground that the affidavit did not state the true residence of Sir G. Rich, as required by the 3 & 4 W. 4, c. 42, s. 8, which enacts, "that no plea in abatement for the nonjoinder of any person as a co-defendant shall be allowed in any court of common law, unless it shall be stated in such plea that such person is resident within the jurisdiction of the court, and unless the place of residence of such person shall be stated with convenient certainty in an affidavit verifying such plea." In support of the application, an affidavit was produced which stated, that at the time the action was commenced Sir G. Rich was not living at 43, Lowndes Street, Belgrave Square; that the party who went to serve him with process was told that the house belonged to another person, and that Sir G. Rich had left it for some time past, and had gone to France.

<sup>a</sup> 7 Bing. 569.

<sup>b</sup> 9 Bing. 287.

*Jervis* showed cause, upon affidavits stating that the house in question was the furnished residence of Sir G. Rich, who had allowed a friend to occupy it; that Sir G. Rich was living there at the time the action was commenced, but had left town for a few months for the benefit of his health, and was endeavouring to let the house furnished until his return. Under these circumstances, it was submitted, that the requisites of the 3 & 4 W. 4, c. 42, s. 8, had been substantially complied with.

*Lush*, in support of the rule, argued that the object of the statute was to compel the party pleading in abatement to give a place of residence where the co-contractor might be found.

*Cur. adv. vult.*

*Pollock, C. B.* This was a motion to set aside a plea in abatement, on the ground that the affidavit did not disclose the true residence of a party who ought to have been joined. We are all of opinion, however, that the residence stated here was the true residence of Sir G. Rich, and consequently, that the rule ought to be discharged, but without costs. The affidavits on which it was moved, no doubt, state that Sir G. Rich was not living there at the time, but when all the facts come to be inquired into, it appears that the statute has been complied with. The word "residence" in it must be understood in the sense of a man's home.

*Parke, B.* The word "residence" means domicile or home, and this appears to have been that of Sir G. Rich.

*Platt, B.* The language of the 3 & 4 W. 4, c. 42, at first induced me to hold a different opinion, but on looking to the cases decided before the statute as to giving the residence of parties not joined, I am of the same opinion with the rest of the court. *Newton v. Verbecke*, 1 Y. & J. 257; *Taylor v. Harris*, 4 B. & A. 92. The statute commands that to be done which the courts formerly required to be done; that is my reason for holding this plea sufficient.

Rule discharged.

#### Court of Review.

*Esparte Jerwood.* August 3.

**COSTS.—SOLICITOR'S BILL.—SERVICE OF PETITION.**—1 & 2 W. 4, c. 56, ss. 46 & 55.

*Two sums of 10l. and 20l. were paid by the official assignee, under the 46th and 55th sections. It did not appear that there were any further assets, nor had any creditor's assignee been appointed. The bankrupt's certificate had been granted. Upon the petition of the solicitor to the fiat, the court ordered his bill of costs to be paid out of the sums above mentioned, with 40s. costs of the petition. Of such applications it is unnecessary to serve notice upon the accountant in bankruptcy, under similar circumstances.*

This was a petition by the solicitor to the fiat, praying that the two sums of 10l. and 20l.,

which had been paid in by the official assignee, under the 1 & 2 Will. 4, c. 56, s. 46 and 55, might be applied towards the payment of the solicitor's bill of costs. On the 3rd of September, 1844, the fiat had been issued. On the 6th of the same month the adjudication had taken place. The 14th had been fixed as the day for choosing assignees. As no creditor appeared, an adjournment took place to the 18th of October, when, in the absence of any creditor appearing, the bankrupt passed his examination, and was allowed his certificate on the 6th of December. The amount of the solicitor's taxed costs was 26l. 3s. 5d. The two sums of 10l. and 20l. appeared to be the only assets.

Mr. *Sturgeon* appeared in support of the petition.

The *Chief Judge* said, that as the bill had been taxed, it might be paid out of the two sums mentioned, and 40s. might be allowed out of those sums for the petitioner's costs. He had been informed that the accountant in bankruptcy had been served with notice of the petition. He wished it to be understood, that he did not require that such notice should be served in cases like the present.

#### NOTES OF THE WEEK.

##### JURY LISTS.

THE lists of persons qualified to serve as jurors for the ensuing year, commencing the 1st instant, have been posted on the doors of the different metropolitan churches, as required by the 6 Geo. 4, c. 50. The lists will be kept open for inspection till the 21st instant.

Objections will be heard by the justices in petty sessions for the parishes in the county of Surrey, at the Court House, Newington Green, on Friday, the 25th instant; for the parishes in the city of Westminster, at the Guildhall, in the Broad Sanctuary, on the 24th instant; and for the parishes in the Holborn Union, at the Board Room of the Workhouse, Little Grays Inn Lane, on the 29th instant.

#### THE EDITOR'S LETTER BOX.

LETTERS on the Small Debts Act, relating either to the objectionable principle it seeks to establish—of having law cheap without reference to its good quality,—or the details of practice by which the provisions of the act are to be carried into effect, are acceptable for our pages; but there is no doubt that much of the criticism on this act is also well adapted for the daily press. Our attention has been called to several letters, and we will consider how they may be rendered useful.

The letters of "W. M.," "*Juvenis*," and "*Rising*," have been received. They will observe that their communications have been anticipated by another correspondent.

# The Legal Observer.

SATURDAY, SEPTEMBER 19, 1846.

—“Quod magis ad nos  
Pertinet, et noscitur malum est, agitur.”

HONAT.

## NOTES ON THE SMALL DEBTS ACT.

### COMMENCEMENT OF ITS OPERATION.

THIS important act, of which we gave a complete summary in our last number,<sup>a</sup> we have now submitted *verbatim* to our readers.<sup>b</sup> And for the present we would particularly call their attention to the 1st, 8th, and 129th sections.

The act, by the 1st section, may be put in force “in such county or counties as to her Majesty, with the advice of her privy council, shall from time to time seem fit.” And the act is to extend to “those counties concerning which any such order shall have been made, and not otherwise or elsewhere.”

Then by the 8th section it is provided, “That any order in council made for the purposes of this act shall be published in the London Gazette.” And it is also enacted by the same section, that “Notice of the intention of her Majesty to take into consideration the propriety of making any such order shall be published in the London Gazette one calendar month at least before any such order shall be made.”

It appears, therefore, that there must first be a month's notice of taking the subject into consideration; and secondly, a notice must be published when the order has been made. We presume also, that a reasonable time must elapse before the order will come into operation.

In the mean time, it seems clear, that actions may be brought in the superior courts as heretofore, and such actions being *commenced* may of course be *prosecuted*.

When the bill was first brought into

parliament, the section, (now the 129th of the act,) provided, that if an action were “*prosecuted*” in a superior court, except in the cases provided for, and a verdict were found for less than 20*l.*, the plaintiff should have no costs, unless the judge certified that the action was fit to be brought in the superior court. This objectionable clause was altered, and the forfeiture of costs limited to actions “*commenced* in a superior court after the passing of this act *for which a plaint might be entered in any court holden under this act.*”

Until, therefore, the expiration of the month's notice to put the act in force and the publication of the order in council by which the new county court will be established, it seems manifest, that the jurisdiction of the superior courts remains as if this act had not passed. We call particular attention to this point, as it was erroneously supposed by some persons that the act in this respect came into immediate operation, and at once ousted the jurisdiction of the courts at Westminster. But until there is “a court holden under this act,” the forfeiture of costs surely cannot apply.

### RULES OF PRACTICE AND COURSE OF PROCEEDING.

We shall, of course, apprise our readers as early as possible of any notice for thus enforcing the act. Before, however, any step can be effectually taken, it appears necessary that the rules of practice and the course of proceeding under the 78th section should be settled by the five judges to whom that important duty is confided. These rules and regulations it will be of much importance to consider, and as the act professes to be partly at least grounded on the Fifth Report of the Common Law

<sup>a</sup> See p. 449-453, *ante*.

<sup>b</sup> See pp. 455, *ante*, and 475, *post*.

Commissioners; and as some of those commissioners are now on the Bench, we shall make some extracts from that report. We apprehend, however, that the act falls short of some of the recommendations of the commissioners, who stated that the present inferior courts were more or less open to some or all of the following objections:—

“That their jurisdiction is in general too limited in point of amount and local extent.

“That frequently suits are removable into higher courts without security.

“The want of competent judges and juries.

“The want of efficient inferior ministers to serve and execute process.

“The want of sufficient and simple process to compel an appearance.

“The use of complicated and extensive pleadings.

“The distance of the place of trial from the residences of the parties and witnesses.

“The want of sufficient means to compel the attendance of witnesses.

“Delay.

“The facility of evading execution.

“The abuses occasioned by entrusting the execution of process to improper agents, for whose misconduct no superior is responsible.

“The want of appeal.

“The expenses of the proceedings as compared with the amount of demand.”

The distance of the residences of the parties and their witnesses can only be partially diminished; and the “want of appeal” it has not been attempted to provide for.

The commissioners also recommended—

1st, That all processes be served and executed by messengers or bailiffs, appointed for the respective districts by the local judges, and responsible to the court.

2ndly, That the process at the commencement of the suit, where the cause of action exceeds *5l.*, shall consist merely in a summons, with plaint and particulars annexed.

3rdly, That the summons shall, in ordinary cases, contain a brief notice of a plaint, with the particulars annexed, and of the time allowed for giving notice of defence, and the time and place of trial.

4thly, That such summons, with plaints and particulars annexed, shall be served as follows, viz.: That the plaintiff shall deliver duplicates signed by him, to a district messenger or bailiff, who shall sign and serve one, and transmit the duplicate signed by him, with the date of the service of the other indorsed, to the registrar’s office.

5thly, That the defendant shall be at liberty to pay into court, such sums as he shall think fit, in all cases except those hereinafter mentioned.

6thly, That the defendant shall in like manner deliver to the messenger or bailiff of the

district, within a time to be limited, duplicate notices of his intention to defend, signed by him, with such brief notice of his grounds of defence as hereinafter suggested; that such messenger or bailiff shall reserve one of such notices, and transmit the other to be filed in the registrar’s office.

7thly, That on the court-day the causes shall be called on in the order of date, when, if notice of trial has been given and both parties appear, they shall proceed to trial.

That if the plaintiff shall appear, and no notice of defence shall have been served, or proof of the service of summons by the oath of the messenger or bailiff, damages shall be assessed for the plaintiff.

But that if the plaintiff do not appear, and the defendant prove service of notice of defence, then he shall have judgment of nonsuit.

8thly, That every levy upon a judgment shall be executed by such district messengers or bailiffs.

We deem it to be of great importance to the administration of justice in these courts, that all ministerial duties should be performed by known and responsible agents of the court.

We propose that if the defendant, in any suit to recover a debt, mean to insist that the debt, though it once existed, has since been in any manner satisfied or otherwise barred; he shall shortly notify such his intention by signifying that he means to insist on

The statute of limitation.

His discharge under the Bankrupt and Insolvent Acts.

Payment.

Accord and satisfaction, &c.

And that whenever notice of set-off shall be given, particulars of set-off shall be indorsed and annexed.

And that in all actions of trespass to the person, lands or goods, the defendant, if he mean to rely on any other ground than a simple denial of the trespass, shall notify his intention to insist on any matter, either in justification, excuse or discharge; as that he means to insist,—

That he acted in self defence or in defence of his dwelling-house or goods.

On a release.

Leave and licence.

Justification under process, &c.

We have extracted these recommendations of the commissioners in order that the attention of the profession may be drawn to a due consideration of the scope of the intended rules and regulations. It will be found that unless the judges have larger power under the 78th section than we apprehend its language strictly confers, there will be considerable difficulty in avoiding great inconvenience and expense, if not gross injustice.

#### PRACTITIONERS’ FEES.

It is much to be regretted that the act has given no power to the judges regard-

ing the costs to be allowed to practitioners in the court. The commissioners strongly recommended attention to this subject.

"Whilst it is essential, not merely to the convenient, but to the impartial administration of justice, that it should be governed by known and settled rules of practice, it is obvious that this cannot be done without the aid of agents or *attorneys who understand such rules* and can apply them. Rules of the simplest construction, for the regulation of judicial practice, would be in general too complex to be understood and applied by ordinary suitors. If professional aid were excluded, such rules must either be nugatory, because not observed, or the penalties of non-observance would be enforced at a sacrifice in point of justice.

"In order to avoid the danger of throwing the practice into the hands of *incompetent or dishonest persons*, we think it desirable that by retrenching all unnecessary expenses in the conduct of a suit, a *fair remuneration* should be allowed to the professional agent for his services; and that by adopting a higher scale of remuneration when the cause of action would better afford it, it might be made worth the while of *intelligent and respectable persons* to undertake a branch of practice which, were the scale of fees to be adapted only to smaller causes of action, they would decline."

## NEW STATUTES, EFFECTING ALTERATIONS IN THE LAW.

### SMALL DEBTS ACT.

9 & 10 VICT. c. 95.

[Concluded from p. 468]

An Act for the more easy Recovery of Small Debts and Demands in England. [August 28, 1846.]

78. *Forms of procedure in courts to be framed by the judges.*—And be it enacted, That five of the judges of the superior courts of common law at Westminster, including the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or one of the said chiefs at the least, shall have power to make and issue all the general rules for regulating the practice and proceedings of the county courts holden under this act, and also to frame forms for every proceeding in the said courts for which they shall think it necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the clerks of the said courts, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be observed and used in all the courts holden under this act; and in any case not expressly provided for herein, or by the said rules, the general principles of practice in the superior courts of common law may be adopted and applied, at the discretion of the judges, to actions and proceedings in their several courts.

79. *Proceedings if plaintiff does not appear or prove his case.*—And be it enacted, That if upon the day of the return of any summons, or at any continuation or adjournment of the said court, or of the cause for which the said summons shall have been issued, the plaintiff shall not appear, the cause shall be struck out; and if he shall appear, but shall not make proof of his demand to the satisfaction of the court, it shall be lawful for the judge to nonsuit the plaintiff, or to give judgment for the defendant, and in either case, where the defendant shall appear and shall not admit the demand, to award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the judge in his discretion shall think fit, and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same court can be recovered: Provided always, that if the plaintiff shall not appear when called upon, and the defendant, or some one duly authorized on his behalf, shall appear, and admit the cause of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff, the court, if it shall think fit, may proceed to give judgment as if the plaintiff had appeared.

80. *Proceedings if the defendant does not appear.*—And be it enacted, That if on the day so named in the summons, or at any continuation or adjournment of the court or cause in which the summons was issued, the defendant shall not appear or sufficiently excuse his absence, or shall neglect to answer when called in court, the judge, upon due proof of service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended: Provided always, that the judge in any such case, at the same or any subsequent court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial of the cause, upon such terms, if any, as to payment of costs, giving security for debt or costs, or such other terms as he may think fit, on sufficient cause shown to him for that purpose.

81. *Judge may grant time.*—And be it enacted, That the judge may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit, and also may from time to time adjourn any court, or the hearing or further hearing of any cause, in such manner as to the judge may seem fit.

82. *Defendant may pay money into court.*—Notice of such payment to be given to plaintiff. And be it enacted, That it shall be lawful for the defendant in any action brought under this act, within such time as shall be directed by the rules made for regulating the practice of the court, to pay into court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment; and notice of such payment shall be



communicated by the clerk of the court to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business; and the said sum of money shall be paid to the plaintiff; but if he shall elect to proceed, and if the plaintiff shall recover no further sum in the action than shall have been so paid into court, the plaintiff shall pay to the defendant the costs incurred by him in the said action after such payment; and such costs shall be settled by the court, and an order shall thereupon be made by the court for the payment of such costs by the plaintiff.

83. *Parties and others may be examined.*—And be it enacted, That on the hearing or trial of any action or on any other proceeding under this act, the parties thereto, their wives, and all other persons, may be examined, either on behalf of the plaintiff or defendant, upon oath, or solemn affirmation in those cases in which persons are by law allowed to make affirmation instead of taking an oath, to be administered by the proper officer of the court.

84. *Persons giving false evidence guilty of perjury.*—And be it enacted, That every person who in any examination upon oath or solemn affirmation before any judge of the county court shall wilfully and corruptly give false evidence shall be deemed guilty of perjury.

85. *Summonses to witnesses.*—And be it enacted, That either of the parties to the suit or any other proceeding under this act may obtain, at the office of the clerk of the court, summonses to witnesses, to be served by one of the bailiffs of the court, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control, and in any such summons any number of names may be inserted.

86. *Penalty on witnesses neglecting summons.*—And be it enacted, That every person on whom any such summons shall have been served, either personally or in such other manner as shall be directed by the general rules or practice of the courts, and to whom at the same time payment or a tender of payment of his expenses shall have been made on such scale of allowance as shall be from time to time settled by the general rules or practice of the court, and who shall refuse or neglect, without sufficient cause, to appear, or to produce any books, papers, or writings required by such summons to be produced, and also every person present in court who shall be required to give evidence, and who shall refuse to be sworn and give evidence, shall forfeit and pay such fine, not exceeding 10*l.*, as the judge shall set on him; and the whole or any part of such fine, in the discretion of the judge, after deducting the costs, shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the general fund of the court in which the fine was imposed.

87. *Penalty to be enforced and accounted for.*—And be it enacted, That payment of any fine imposed by any court under the authority of this act may be enforced upon the order of the judge in like manner as payment of any

debt adjudged in the said court, and shall be accounted for as herein provided.

88. *Costs to abide the event of the action.*—And be it enacted, That all the costs of any action or proceeding in the court, not heretofore otherwise provided for, shall be paid by or apportioned between the parties in such manner as the judge shall think fit, and in default of any special direction shall abide the event of the action, and execution may issue for the recovery of any such costs in like manner as for any debt adjudged in the said court.

89. *Judgments how far final.*—And be it enacted, That every order and judgment of any court holden under this act, except as herein provided, shall be final and conclusive between the parties, but the judge shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given to him entitling either the plaintiff or defendant to the judgment of the court, and shall also in every case whatever have the power, if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings.

90. *No actions to be removed into superior courts but on certain conditions.*—And be it enacted, That no plaint entered in any court holden under this act shall be removed or removable from the said court into any of her Majesty's superior courts of record by any writ or process, unless the debt or damage claimed shall exceed 5*l.*, and then only by leave of a judge of one of the said superior courts, in cases which shall appear to the judge fit to be tried in one of the superior courts, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as he shall think fit.

91. *Who may appear for any party in the superior courts.*—And be it enacted, That no person shall be entitled to appear for any other party to any proceeding in any of the said courts unless he be an attorney of one of her Majesty's superior courts of record, or a barrister-at-law instructed by such attorney on behalf of the party, or, by leave of the judge, any other person allowed by the judge to appear instead of such party; but no barrister, attorney, or other person, except by leave of the judge, shall be entitled to be heard to argue any question as counsel for any other person in any proceeding in any court holden under this act; and no person, not being an attorney admitted to one of her Majesty's superior courts of record, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said court; and no attorney shall be entitled to have or recover therefore any sum of money, unless the debt or damage claimed shall be more than 40*s.*, or to have or recover more than 10*s.* for his fees and costs, unless the debt or damage claimed shall be more than 5*l.*, or more than 15*s.* in any case within the summary jurisdiction given by this act; and in no case shall any fee exceeding 12*s.* 6*d.* be

\* This should be County Courts.

allowed for employing a barrister as counsel in the cause; and the expense of employing a barrister or an attorney, either by plaintiff or defendant, shall not be allowed on taxation of costs in the case of a plaintiff where less than 5*l.* is recovered, or in the case of a defendant where less than 5*l.* is claimed, or in any case unless by order of the judge.

92. *Court may make orders for payment by instalments.*—And be it enacted, That the judge may make orders concerning the time or times and by what instalments any debt or damages or costs for which judgment shall be obtained in the said court shall be paid, and all such monies shall be paid into court, unless the judge shall otherwise direct.

93. *Cross judgments.*—And be it enacted, That if there shall be cross judgments between the parties, execution shall be taken out by that party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the remainder shall be entered, as well as satisfaction on the judgment for the smaller sum, and if both sums shall be equal, satisfaction shall be entered upon both judgments.

94. *Court may award execution against goods.*—And be it enacted, That whenever the judge shall have made an order for the payment of money, the amount shall be recoverable, in case of default or failure of payment thereof forthwith, or at the time or times and in the manner thereby directed, by execution against the goods and chattels of the party against whom such order shall be made; and the clerk of the said court, at the request of the party prosecuting such order, shall issue under the seal of the court a writ of fieri facias as a warrant of execution to the high bailiff of the court, who by such warrant shall be empowered to levy, or cause to be levied, by distress and sale of the goods and chattels of such party such sum of money as shall be ordered, wheresoever they may be found within the district of the court, whether within liberties or without, and also the costs of the execution; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant.

95. *Execution not to issue till after default in payment of some instalment, and then it may issue for the whole sum due.*—And be it enacted, That if the judge shall have made any order for payment of any sum of money by instalments, execution upon such order shall not issue against the party until after default in payment of some instalment according to such order, and execution or successive executions may then issue for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the judge shall order, either at the time of making the original order, or at any subsequent time, under the seal of the court.

96. *What goods may be taken in execution.*—And be it enacted, That every bailiff or officer executing any process of execution issuing out

of the said county court against the goods and chattels of any person may by virtue thereof seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of 5*l.*, which shall to that extent be protected from such seizure), and may also seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to any such person against whom any such execution shall have issued as aforesaid.

97. *Securities seized to be held by high bailiff.*—And be it enacted, That the high bailiff shall hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money which shall have been so seized or taken as aforesaid, as a security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby, when the time of payment thereof shall have arrived.

99. *Parties having obtained an unsatisfied judgment may obtain a summons on charge of fraud.*—And be it enacted, That it shall be lawful for any party who has obtained any unsatisfied judgment or order in any court held by virtue of this act, or under any act repealed by this act, for the payment of any debt or damages or costs, to obtain a summons from any county court within the limits of which any other party shall then dwell or carry on his business, such summons to be in such form as shall be directed by the rules made for regulating the practice of the county courts as herein provided, and to be served personally upon the person to whom it is directed, requiring him to appear at such time as shall be directed by the said rules to answer such things as are named in such summons; and if he shall appear in pursuance of such summons he may be examined upon oath touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which is the subject of the action in which judgment has been obtained against him; and as to the means and expectation he then had, and as to the property and means he still hath, of discharging the said debt or damages or liability, and as to the disposal he may have made of any property; and the person obtaining such summons as aforesaid, and all other witnesses whom the judge shall think requisite, may be examined upon oath touching the inquiries authorized to be made as aforesaid; and the costs of such summons and of all proceedings thereon shall be deemed costs in the cause.

99. *Commitment for frauds, &c.*—And be it enacted, That if the party so summoned shall

not attend as required by such summons, and shall not allege a sufficient excuse for not attending, or shall, if attending, refuse to be sworn, or to disclose any of the things aforesaid, or if he shall not make answer touching the same to the satisfaction of such judge, or if it shall appear to such judge, either by the examination of the party or by any other evidence, that such party, if a defendant, in incurring the debt or liability which is the subject of the action in which judgment has been obtained has obtained credit from the plaintiff under false pretences, or by means of fraud or breach of trust, or has wilfully contracted such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same, or shall have made or caused to be made any gift, delivery, or transfer of any property, or shall have charged, removed, or concealed the same, with intent to defraud his creditors or any of them, or if it shall appear to the satisfaction of the judge of the said court that the party so summoned has then, or has had since the judgment obtained against him, sufficient means or ability to pay the debt or damages or costs so recovered against him, either altogether, or by any instalment or instalments which the court in which the judgment was obtained shall have ordered, and if he shall refuse or neglect to pay the same as shall have been so ordered, or as shall be ordered pursuant to the power hereinafter provided, it shall be lawful for such judge, if he shall think fit, to order that any such party may be committed to the common gaol or house of correction of the county, district, or place in which the party summoned is resident, or to any prison which shall be provided as the prison of the court, for any period not exceeding 40 days.

100. *Power of judge to rescind or alter orders.*—And be it enacted, That it shall be lawful for the judge of any court before whom such summons shall be heard, if he shall think fit, whether or not he shall make any order for the committal of the defendant, to rescind or alter any order that shall have been previously made against any defendant so summoned before him for the payment, by instalments or otherwise, of any debt or damages recovered, and to make any further or other order, either for the payment of the whole of such debt or damages and costs forthwith, or by any instalments, or in any other manner as such judge may think reasonable and just.

101. *Power to examine and commit at hearing of the cause.*—And be it enacted, That in every case where the defendant in any suit brought in any county court shall have been personally served with the summons to appear or shall personally appear at the trial of the same, the judge at the hearing of the cause, or at any adjournment thereof, if judgment shall be given against the defendant, shall have the same power and authority of examining the defendant and the plaintiff and other parties touching the several things herein-before mentioned, and of committing the defendant to

prison, and of making an order, as he might have and exercise under the provisions herein-before contained in case the plaintiff had obtained a summons for that purpose after the judgment obtained as herein-before mentioned.

102. *Modes of issuing and executing warrants of commitment.*—And be it enacted, That whenever any order of commitment shall have been made as aforesaid, the clerk of the said court shall issue under the seal of the court a warrant of commitment directed to one of the bailiffs of any county court, who by such warrant shall be empowered to take the body of the person against whom such order shall be made; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant; and the gaoler or keeper of every gaol, house of correction, and prison mentioned in any such order shall be bound to receive and keep the defendant therein until discharged under the provisions of this act, or otherwise by due course of law; and no protection, order, or certificate granted by any court of bankruptcy, or for the relief of insolvent debtors, shall be available to discharge any defendant from any commitment under such last-mentioned order.

103. *Imprisonment not to operate as a satisfaction for the debt, &c.*—And be it enacted, That no imprisonment under this act shall in anywise operate as a satisfaction or extinguishment of the debt or other cause of action on which a judgment has been obtained, to protect the defendant from being anew summoned and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this act, or deprive the plaintiff of any right to take out execution against the goods and chattels of the defendant, in the same manner as if such imprisonment had not taken place.

104. *How execution may be had out of the jurisdiction of the court.*—And be it enacted, That in all cases where a warrant of execution shall have issued against the goods and chattels of any party, or an order for his commitment shall have been made under this act, and such party, or his goods and chattels, shall be out of the jurisdiction of the court, it shall be lawful for the high bailiff of the court to send such warrant of execution or of commitment to the clerk of any other court constituted under this act, within the jurisdiction of which such party or his goods and chattels, shall then be or believed to be, with a warrant thereto annexed, under the hand of the high bailiff and seal of the court from which the original warrant issued, requiring execution of the same, and the clerk of the court to which the same shall be sent shall seal or stamp the same with the seal of his court, and issue the same to the high bailiff of his court, and thereupon such last-mentioned high bailiff shall be authorised and required to act in all respects as if the original warrant of execution or commitment had been directed to him by the court of which he is the high bailiff, and shall, within such time as shall be specified in the rules of practice, return to the high bailiff of the court from

which the same originally issued, what he shall have done in the execution of such process, and in case a levy shall have been made shall, within such time as shall be specified in the rules of practice, pay over all monies received in pursuance of the warrant to the high bailiff of the court from which the same shall have originally issued, retaining the fees for execution of the process; and where any order of commitment shall have been made, and the person apprehended, he shall be forthwith conveyed, in custody of the bailiff or officer apprehending him, to the gaol or house of correction or other prison of the court within the jurisdiction of which he shall have been apprehended, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of this act; and all constables and other peace officers shall be aiding and assisting within their respective districts in the execution of such warrant.

105. *Power to judge to suspend execution in certain cases.*—And be it enacted, That if it shall at any time appear to the satisfaction of the judge, by the oath or affirmation of any person, or otherwise, that any defendant is unable from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the judge, in his discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such action, for such time and on such terms as the judge shall think fit, and so from time to time until it shall appear by the like proof as aforesaid that such temporary cause of disability has ceased.

106. *Regulating the sale of goods taken in execution.*—And be it enacted, That no sale of any goods which shall be taken in execution as aforesaid shall be until after the end of five days at least next following the day on which such goods shall have been so taken, unless such goods be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and until such sale the goods shall be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person approved by the high bailiff, to be put in possession by the bailiff; and it shall be lawful for the high bailiff, from time to time as he shall think proper, to appoint such and so many persons for keeping possession, and so many sworn brokers and appraisers for the purpose of selling or valuing any goods, chattels, or effects taken in execution under this act, as shall appear to him to be necessary, and to direct security to be taken from each of them, for such sum and in such manner as he shall think fit, for the faithful performance of their duties without injury or oppression; and the judge or high bailiff may dismiss any person, broker, or appraiser so appointed; and no goods taken in execution under this act shall be sold for the purpose of satisfying the warrant of execution except by one of the brokers or appraisers so appointed; and the brokers or appraisers so appointed shall be entitled to have,

out of the produce of the goods so distrained or sold, sixpence in the pound on the value of the goods for the appraisement thereof, whether by one broker or more, over and above the stamp duty, and for advertisements, catalogues, sale and commission, and delivery of goods, 1s. in the pound on the net produce of the sale.

107. *As to the liability of goods taken in execution under 8 Anne, c. 17.* Landlords may claim certain rents in arrear. Bailiffs making levies may distrain for rent and costs. In case of replevins. 57 G. 3, c. 93.—And be it enacted, That so much of an act passed in the 8 Anne, c. 17, intituled “An Act for the better Security of Rents, and to prevent Frauds committed by Tenants,” as relates to the liability of goods taken by virtue of any execution, shall not be deemed to apply to goods taken in execution under the process of any court holden under this act; but the landlord of any tenement in which any such goods shall be so taken shall be entitled, by any writing under his hand or under the hand of his agent, to be delivered to the bailiff or officer making the levy, which writing shall state the terms of holding, and the rent payable for the same, to claim any rent in arrear then due to him, not exceeding the rent of four weeks where the tenement is let by the week, and not exceeding the rent accruing due in two terms of payment, where the tenement is let for any other term less than a year, and not exceeding in any case the rent accruing due in one year; and in case of any such claim being so made the bailiff or officer making the levy shall distrain as well for the amount of the rent so claimed, and the costs of such additional distress, as for the amount of money and costs for which the warrant of execution issued under this act, and shall not proceed to sell the same or any part thereof within five days next after such distress taken; and if any replevin be made of the goods so taken, such of the goods shall be sold under the execution as shall satisfy the money and costs for which the warrant of execution issued, and the costs of the sale; and the overplus of such sale (if any), and also the residue of the goods, shall be returned as in other cases of distress for rent, and replevin thereof; and for every such additional distress for rent in arrear the high bailiff of the court shall be entitled to have as the costs of the distress, instead of the fees allowed by this act for making such distress, and keeping possession thereof, the fees allowed by an act passed in the 57 G. 3, c. 93, intituled “An Act to regulate the Costs of Distresses levied for Payment of small Rents.”

108. *No execution shall be stayed by writ of error.*—And be it enacted, That no judgment or execution shall be stayed, delayed, or reversed upon or by any writ of error, or superseas thereon, to be sued for the reversing of any judgment given in any court holden under the provisions of this act.

109. *Execution to be superseded on payment of debt and costs.*—And be it enacted, That in

or upon every warrant of execution issued against the goods and chattels of any person whomsoever the clerk of the court shall cause to be inserted or indorsed the sum of money and costs adjudged, with the sums allowed by this act as increased costs for the execution of such warrant; and if the party against whom such execution shall be issued shall, before an actual sale of the goods and chattels, pay or cause to be paid or tendered unto the clerk of the court out of which such warrant of execution has issued, or to the bailiff holding the warrant of execution, such sum of money and costs as aforesaid, or such part thereof as the person entitled thereto shall agree to accept in full of his debt or damages and costs, together with the fees herein directed to be paid, the execution shall be superseded, and the goods and chattels of the said party shall be discharged and set at liberty.

110. *Debtor to be discharged from custody upon payment of debt and costs.*—And be it enacted, That any person imprisoned under this act who shall have paid or satisfied the debt or demand, or the instalments thereof payable, and costs remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such order, and all subsequent costs, shall be discharged out of custody, upon the certificate of such payment or satisfaction, signed by the clerk of the court, by leave of the judge of the court in which the order of imprisonment was made.

111. *Minutes of proceedings to be kept.*—And be it enacted, That the clerk of every court holden under this act shall cause a note of all complaints and summonses, and of all orders, and of all judgments and executions, and returns thereto, and of all fines, and of all other proceedings of the court, to be fairly entered from time to time in a book belonging to the court, which shall be kept at the office of the court; and such entries in the said book, or a copy thereof bearing the seal of the court, and purporting to be signed and certified as a true copy by the clerk of the court, shall at all times be admitted in all courts and places whatsoever as evidence of such entries, and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding, without any further proof.

112. *Suitors' money unclaimed in six years to go to general fund.*—And be it enacted, That the clerk or clerks of every such court shall in the month of March in each year make out a correct list of all sums of money belonging to suitors in the court which shall have been paid into court, and which shall have remained unclaimed for five years before the first day of the month of January then last past, specifying the names of the parties for whom or on whose account the same were so paid into court; and a copy of such list shall be put up and remain during court hours in some conspicuous part of the court house, and at all times in the clerk's office, and all sums of money which shall have been paid into any such court, to the cause of any suitor or suitors thereof, and which

shall have remained unclaimed for the period of six years before the passing of this act, and which are now in the hands of any commissioner, trustee, judge, or officer of such court, or otherwise held in trust for such suitors, and all further sums of money which shall hereafter be paid into any such court, to the use of any suitor or suitors thereof, shall, if unclaimed for the period of six years after the same shall have been so paid into court, be applicable as part of the general fund of the court, and shall be carried to the account of such fund, and no person shall be entitled to claim any sum which shall have remained unclaimed for six years; but no time during which the person entitled to claim such sum shall have been an infant or feme covert, or of unsound mind, or beyond the seas, shall be taken into account in estimating the said period of six years.

113. *Power of committal for contempt.*—And be it enacted, That if any person shall wilfully insult the judge or any juror, or any bailiff, clerk, or officer of the said court, for the time being, during his sitting or attendance in court, or in going to or returning from the court, or shall wilfully interrupt the proceedings of the court, or otherwise misbehave in court, it shall be lawful for any bailiff or officer of the court, with or without the assistance of any other person, by the order of the judge, to take such offender into custody, and detain him until the rising of the court; and the judge shall be empowered, if he shall think fit, by a warrant under his hand, and sealed with the seal of the court, to commit any such offender to any prison to which he has power to commit offenders under this act, for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding 5*l.* for every such offence, and in default of payment thereof to commit the offender to any such prison as aforesaid for any time not exceeding seven days, unless the said fine be sooner paid.

114. *Penalty for assaulting bailiffs, or rescuing goods taken in execution.*—And be it enacted, That if any officer or bailiff of any court holden under this act shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the court, the person so offending shall be liable to a fine not exceeding 5*l.*, to be recovered by order of the court, or before a justice of the peace as herein-after provided; and it shall be lawful for the bailiff of the court or any peace officer in any such case to take the offender into custody, (with or without warrant,) and bring him before such court or justice accordingly.

115. *Bailiffs made answerable for escapes, and neglect to levy execution.*—And be it enacted, That in case any bailiff of the said court who shall be employed to levy any execution against goods and chattels shall, by neglect or connivance or omission, lose the opportunity of levying any such execution, then upon complaint of the party aggrieved by reason of such neglect, connivance, or omission, (and the fact alleged being proved to the

satisfaction of the court on the oath of any credible witness,) the judge shall order such bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the bailiff shall be liable thereto; and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court.

116. *Remedies against, and penalties on, bailiffs and other officers for misconduct.*—And be it enacted, That if any clerk, bailiff, or officer of the court, acting under colour or pretence of the process of the said court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this act, it shall be lawful for the judge to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs, as he shall think just; and also, if he shall think fit, to impose such fine upon the clerk, bailiff, or officer, not exceeding ten pounds for each offence, as he shall deem adequate; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court.

117. *Penalty on officers taking fees besides those allowed.*—And be it enacted, That every treasurer, clerk, bailiff, or other officer employed in putting this act or any of the powers thereof in execution, who shall wilfully and corruptly exact, take, or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively as aforesaid, for or on account of any thing done or to be done by virtue of this act, or on any account whatsoever relative to putting this act into execution, shall, upon proof thereof before the said court, and in the case of a clerk, treasurer, or high bailiff on allowance of the finding of the court by the Lord Chancellor, be for ever incapable of serving or being employed under this act in any office of profit or emolument, and shall also be liable for damages as herein provided.

118. *Claims as to goods taken in execution to be adjudicated in court.*—And be it enacted, That if any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any court holden under this act, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, it shall be lawful for the clerk of the court, upon application of the officer charged with the execution of such process,

as well before as after any action brought against such officer, to issue a summons calling before the said court as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in any of her Majesty's superior courts of record, or in any local or inferior court, in respect of such claim, shall be stayed, and the court in which such action shall have been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the county court; and the judge of the county court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such court.

119. *Actions of replevin may be brought without writ.*—And be it declared and enacted, That all actions of replevin in cases of distress for rent in arrear or damage *faisant* which shall be brought in the county court shall be brought without writ in a court held under this act.

120. *Plaints where to be entered.*—And be it enacted, That in every such action of replevin the plaintiff shall be entered in the court holden under this act for the district wherein the distress was made.

121. *How actions of replevin may be removed.*—And be it enacted, That in case either party to any such action of replevin shall declare to the court in which such action shall be brought that the title to any corporeal or incorporeal hereditament, or to any toll, market, fair, or franchise, is in question, or that the rent or damage in respect of which the distress shall have been taken is more than the sum of twenty pounds, and shall become bound, with two sufficient sureties, to be approved by the clerk of the court, in such sums as to the judge shall seem reasonable, regard being had to the nature of the claim, and the alleged value or amount of the property in dispute, or of the rent or damage, to prosecute the suit with effect and without delay, and to prove before the court by which such suit shall be tried that such title as aforesaid is in dispute between the parties, or that there was ground for believing that the said rent or damage was more than twenty pounds, then, and not otherwise, the action may be removed before any court competent to try the same in such manner as hath been accustomed.

122. *Possession of small tenements may be recovered by plaintiff in county court.* If tenant, &c. neglect to appear, or refuse to give possession, judge may, on proof of service of summons, issue a warrant to enforce the same.—And be it enacted, That when and so soon as the term and interest of the tenant of any house, land, or other corporeal hereditament, where the value of the premises or the rent payable in respect of such tenancy did not exceed the

sum of fifty pounds by the year, and upon which no fine shall have been paid, shall have ended, or shall have been duly determined by a legal notice to quit, and such tenant, or, if such tenant do not actually occupy the premises, or occupy only a part thereof, any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, it shall be lawful for the landlord or his agent to enter a plaint in the county court to be holden under this act, and thereupon a summons shall issue to the person so neglecting or refusing; and if the tenant or occupier shall not thereupon appear at the time and place appointed, and show cause to the contrary, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, to the said landlord or his agent, it shall be lawful for such landlord or agent to give to the court proof of the holding, and of the end or other determination of the tenancy, with the time or manner thereof, and, where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession; and upon proof of the service of the summons, and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for the judge to issue a warrant under the seal of the court to any bailiff of the court, requiring and authorizing him, within a period to be therein named, not less than seven or more than ten clear days from the date of such warrant, to give possession of the premises to such landlord or agent; and such warrant shall be a sufficient warrant to the said bailiff to enter upon the premises, with such assistants as he shall deem necessary, and to give possession accordingly: Provided always, that entry upon any such warrant shall not be made on a Sunday, Good Friday, or Christmas Day, or at any time except between the hours of nine in the morning and four in the afternoon: Provided also, that nothing herein contained shall be deemed to protect any person by whom any such warrant shall be sued out of the county court from any action which may be brought against him by any such tenant or occupier for or in respect of such entry and taking possession where such person had not, at the time of suing out the same as aforesaid, lawful right to the possession of the same premises.

123. *The manner in which such summons shall be served.*—And be it enacted, That such summons as last aforesaid may be served either personally or by leaving the same with some person being in and apparently residing at the place of abode of the person or persons so holding over as aforesaid; provided that if the person or persons so holding over, or any or either of them, cannot be found, and the place of abode of such person or persons shall either not be known, or admission thereto cannot be obtained for serving such summons, the posting of the said summons on some conspicuous

part of the premises so held over shall be deemed to be good service upon such person or persons respectively.

124. *Judges, clerks, bailiffs, or other officers not liable to actions on account of proceedings taken.*—And be it enacted, That it shall not be lawful to bring any action or prosecution against the judge or against the clerk of the court by whom such warrant as aforesaid shall have been issued, or against any bailiff or other person by whom such warrant may be executed or summons affixed, for issuing such warrant, or executing the same respectively, or affixing such summons, by reason that the person by whom the same shall be sued out had not lawful right to the possession of the premises.

125. *Where landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity.*—And be it enacted, That where the landlord at the time of applying for such warrant as aforesaid had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither the said landlord nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this act, but the party aggrieved may, if he think fit, bring an action on the case for such irregularity or informality, in which the damage alleged to be sustained thereby shall be specially laid, and may recover full satisfaction for such special damage, with costs of suit; provided that if the special damage so laid be not proved, the defendant shall be entitled to a verdict, and that if proved, but assessed by the jury at any sum not exceeding five shillings, the plaintiff shall recover no more costs than damages, unless the judge before whom the trial shall have been holden shall certify that in his opinion full costs ought to be allowed.

126. *How execution of warrant of possession may be stayed.*—And be it enacted, That in every case in which the person by whom any such warrant shall be sued out of the county court had not at the time of suing out the same lawful right to the possession of the premises, the suing out of any such warrant as last aforesaid shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry shall be made by virtue of the warrant; and in case any such tenant or occupier will become bound, with two sufficient sureties, to be approved by the clerk of the court, in such sum as to the judge shall seem reasonable, regard being had to the value of the premises, and to the probable cost of such action, to sue the person by whom such warrant was sued out with effect and without delay, and to pay all the costs of the proceeding in such action in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action or become nonsuit therein, execution upon the warrant shall be stayed until judgment shall have been given in such action of trespass; and if upon the trial

of such action of trespass a verdict shall pass for the plaintiff, such verdict and judgment thereupon shall supersede the said warrant.

127. *Proceedings on the bond for staying warrant of possession, &c.*—And be it enacted, That every bond given on the removal of any action out of the county court, or upon staying the execution of any such warrant of possession as aforesaid, or on moving for a new trial, or to set aside a verdict, judgment, or nonsuit, shall be made to the other party to the action at the costs of such other party, and shall be approved by the judge, and attested under the seal of the court; and if the bond so taken be forfeited, or if, upon the proceeding for securing which such bond was given, the judge before whom such proceeding shall be had shall not certify upon the record in court that the condition of the bond hath been fulfilled, the party to whom the bond shall have been so made may bring an action of debt, and recover thereon: Provided always, that the court in which such action as last aforesaid shall be brought may by a rule of court give such relief to the parties liable upon such bond as may be agreeable to justice and reason, and such rule shall have the nature and effect of a defeasance to such bond.

128. *Concurrent jurisdiction with superior courts.*—And be it enacted, That, all actions and proceedings which before the passing of this act might have been brought in any of her Majesty's superior courts of record where the plaintiff dwells more than twenty miles from the defendant, or where the cause of action did not arise wholly or in some material point within the jurisdiction of the court within which the defendant dwells or carries on his business at the time of the action brought, or where any officer of the county court shall be a party, except in respect of any claim to any goods and chattels taken in execution of the process of the court, or the proceeds or value thereof, may be brought and determined in any such superior court, at the election of the party suing or proceeding, as if this act had not been passed.

129. *As to actions brought for small debts in superior courts.*—And be it enacted, That if any action shall be commenced after the passing of this act in any of her Majesty's superior courts of record, for any cause other than those lastly herein-before specified, for which a plaint might have been entered in any court holden under this act, and a verdict shall be found for the plaintiff for a sum less than twenty pounds, if the said action is founded on contract, or less than five pounds if it be founded on tort, the said plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall not be found for the plaintiff the defendant shall be entitled to his costs as between attorney and client, unless in either case the judge who shall try the cause shall certify on the back of the record that the action was fit to be brought in such superior court.

130. *Penalties and costs to be recovered be-*

*fore a justice, and levied by distress.*—And be it enacted, That all penalties, fines, and forfeiture by this act inflicted or authorised to be imposed (the manner of recovering and applying whereof is not hereby otherwise particularly directed) shall, upon proof before any justice of the peace having jurisdiction within the county or place where the offender shall reside or be, or the offence shall be committed, either by the confession of the party offending, or by the oath of any credible witness, be levied, with the costs attending the summons and conviction, by distress and sale of the goods and chattels of the party offending, by warrant under the hand of any such justice; and the overplus (if any), after such penalties, fines, and forfeitures, and the charges of such distress and sale, are deducted, shall be returned, upon demand, unto the owner of such goods and chattels.

131. *In default of security, offender may be detained till return of warrant of distress.*—And be it enacted, That if any such penalties, fines, and forfeitures respectively shall not be paid forthwith upon conviction, it shall be lawful for such justice to order the offender so convicted to be detained in safe custody until return can be conveniently made to such warrant of distress, unless such offender shall give sufficient security to the satisfaction of such justice for his appearance before him on such day as shall be appointed for the return of such warrant of distress, such day not being more than eight days from the time of taking any such security, which security such justice shall be empowered to take by way of recognizance or otherwise as to him shall seem fit.

132. *In default of distress, offender may be committed.*—And be it enacted, That if upon return of such warrant it shall appear that no sufficient distress can be had thereupon, or in case it shall appear to the satisfaction of such justice, either by confession of the offender or otherwise, that he hath not within the jurisdiction of such justice sufficient goods and chattels whereon to levy all such penalties, forfeitures, costs, and charges, such justice may, at his discretion, without issuing any warrant of distress, commit the offender to the common gaol or house of correction for any time not exceeding three calendar months, unless such penalties, forfeitures, and fines, and all reasonable charges attending the recovery thereof, shall be sooner paid and satisfied.

133. *Penalties not otherwise applied, to be paid into the general fund.*—And be it enacted, That the monies arising from any such penalties, forfeitures, and fines as aforesaid, when paid and levied, shall (if not by this act directed to be otherwise applied) be from time to time paid to the clerk of the court, and shall be applied in aid of the general fund thereof.

134. *Justices may proceed by summons in the recovery of penalties.*—And be it enacted, That in all cases in which by this act any penalty or forfeiture is made recoverable before a justice of the peace, it shall be lawful for such justice to summon before him the party complained



against, and on such summons to hear and determine the matter of such complaint, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing shall have been exhibited before him; and all such proceedings by summons without information in writing shall be as valid and effectual to all intents and purposes as if an information in writing had been exhibited.

135. *Form of conviction.*—And be it enacted, That in all cases where any conviction shall be had for any offence committed against this act the form of conviction may be in the words or to the effect following; (that is to say,)

“Be it remembered, That on this day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_ of her Majesty’s justices of the peace for the \_\_\_\_\_ [or before a judge appointed under an act passed in the \_\_\_\_\_ year of the reign of her Majesty Queen Victoria, intituled *here insert the title of this act,*] of having [*state the offence*]; and I [or we] the said \_\_\_\_\_ do adjudge the said \_\_\_\_\_ to forfeit and pay for the same the sum of \_\_\_\_\_ or be committed to \_\_\_\_\_ for the space of \_\_\_\_\_. Given under \_\_\_\_\_ hand and seal the day and year aforesaid.

136. *Proceedings not invalid for want of form.*—And be it enacted, That no order, verdict, or judgment, or other proceeding, made concerning any of the matters aforesaid, shall be quashed or vacated for want of form.

137. *Distress not unlawful for want of form.*—And be it enacted, That where any distress shall be made for any sum of money to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor the party making the same to be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall the party distraining be deemed a trespasser from the beginning on account of any irregularity which shall afterwards be committed by the party so distraining, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action upon the case.

138. *Limitation of actions for proceedings in execution of this act.*—And for the protection of persons acting in the execution of this act, be it enacted, That all actions and prosecutions to be commenced against any person for anything done in pursuance of this act shall be laid and tried in the county where the fact was committed, and shall be commenced within three calendar months after the fact committed, and not afterwards, or otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if after action brought a sufficient sum of money shall have been paid into court, with costs, by or on behalf of the defendant.

139. *Provision for the protection of officers of the court.*—And be it enacted, That if any person shall bring any suit in any of her Majesty’s superior courts of record in respect of any grievance committed by any clerk, bailiff, or officer of any court holden under this act, under colour or pretence of the process of the said court, and the jury upon the trial of the action shall not find greater damages for the plaintiff than the sum of 20*l.*, no costs shall be awarded to the plaintiff in such action unless the judge shall certify in court upon the back of the record that the action was fit to be brought in such superior court.

140. *Act not to affect rights of universities of Oxford or Cambridge.*—Provided always, and be it enacted, That nothing in this act contained shall be construed to alter or affect the rights or privileges of the chancellor, masters, or scholars of the universities of Oxford or Cambridge respectively as by law possessed, or the jurisdiction of the courts of the Chancellors or Vice-Chancellors of the said universities, as holden under the respective charters of the said universities, or otherwise.

141. *Nothing to affect the courts of the wardens of the Stannaries.*—Provided always, and be it declared and enacted, That nothing in this act contained shall be construed to affect the courts of the Lord Warden or of the Vice-Warden of the Stannaries of Cornwall; but this provision shall not be deemed to prevent the establishment of any court under this act within the said Stannaries, or to limit or affect the jurisdiction of any court so established under this act.

142. *Interpretation of act.*—And be it enacted, That in construing this act all things directed or authorized to be done by or with respect to the Lord Chancellor shall and may be done by or with respect to a Lord Keeper or the first commissioner for the custody of the Great Seal of the United Kingdom of Great Britain and Ireland; and all things directed or authorized to be done by or with respect to the commissioners of her Majesty’s Treasury shall and may be done by and with respect to three or more of the said commissioners or the Lord High Treasurer; and the word “person” shall be understood to mean a body politic, corporate, or collegiate, as well as individual; and every word importing the singular number shall, where necessary to give full effect to the enactments herein contained, be understood to mean several persons or things as well as one person or thing; and every word importing the masculine gender shall, where necessary, be understood to mean a female as well as a male; and the words “County Court” shall be understood to mean any court holden under this act; and the term “landlord” shall be understood to mean the person entitled to the immediate reversion of the lands, or, if the property be holden in joint tenancy, coparcenary, or tenancy in common, shall be understood to mean any one of the persons entitled to such reversion; and the word “clerk” shall be understood to mean “chief clerk,” or “registrar,” and the words “attorney-at-law” shall

be understood to include a solicitor in any court of equity; and the word "agent" shall be understood to mean any person usually employed by the landlord in the letting of lands, or in the collection of rents thereof, or specially authorized to act in any particular matter by writing under the hand of such landlord; and the word "bailiff" shall be understood to include high bailiff; unless in any of these cases there be something in the context inconsistent with such meaning.

143. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

**SCHEDULES TO WHICH THIS ACT REFERS.**

**SCHEDULE (A.)**

Acts for the more easy and speedy Recovery of Small Debts within the Towns, Parishes, and Places under written, and other Parishes and Places adjacent; that is to say,

Ashton-under-Lyne, 48 Geo. 3, c. xcvi.  
Bath, 45 Geo. 3, c. lxxvii.  
Beverley, 46 Geo. 3, c. cxxxv.  
Birmingham, 47 Geo. 3, c. xiv.  
Blackheath, 47 Geo. 3, c. iv.  
Bolingbroke and Horncastle, 47 Geo. 3, Sess. 2, c. lxxviii.  
Boston, 47 Geo. 3, Sess. 2, c. 1.  
Bradford, 47 Geo. 3, Sess. 2, c. xxxix.  
Bristol, 56 Geo. 3, c. lxxvi.  
Bristol, 7 Will. 4, and 1 Vict. c. lxxxiv.  
Brixton, 46 Geo. 3, c. lxxxviii.  
Broseley, 22 Geo. 3, c. xxxvii.  
Canterbury, 25 Geo. 2, c. xiv.  
Chippenham, 5 Geo. 3, c. lx.  
Cirencester, 32 Geo. 3, c. lxxvii.  
Codesheath, 48 Geo. 3, c. 1.  
Deal, 26 Geo. 3, c. xviii.  
Derby, 6 Geo. 3, c. xx.  
Doncaster, 4 Geo. 3, c. xl.  
Dover, 24 Geo. 3, c. viii.  
Ecclesall, 48 Geo. 3, c. ciii.  
Elloe, 47 Geo. 3, c. xxxvii.  
Ely, Isle of, 18 Geo. 3, c. xxxvi.  
Exeter, 13 Geo. 3, c. xxvii.  
Faversham, 25 Geo. 3, c. vii.  
Folkestone, 26 Geo. 3, c. xcvi.  
Gloucester, 1 Will. & Mary, c. xviii.  
Gravesend, 47 Geo. 3, Sess. 2, c. xl.  
Grimaby, Great, 46 Geo. 3, c. xxxvii.  
Hagnaby, 18 Geo. 3, c. xxxiv.  
Halesowen, 47 Geo. 3, c. xxi.  
Ipswich, 47 Geo. 3, Sess. 2, c. lxxix.  
Kidderminster, 12 Geo. 3, c. lxi.  
King's Lynn, 10 Geo. 3, c. xx.  
Kingston-upon-Hull, 48 Geo. 3, c. cix.  
Kirby in Kendal, 4 Geo. 3, c. xli.  
Lincoln, 24 Geo. 2, c. xvi.  
Liverpool, 6 & 7 Will. 4, c. cxxxv.  
Manchester, 48 Geo. 3, c. xliii.  
Margate, 47 Geo. 3, Sess. 2, c. vii.  
Middlesex, 23 Geo. 2, c. xxxiii.  
Newcastle-upon-Tyne, 1 Will. & Mary, c. xvii.  
Norwich, 12 & 13 W. 4, c. vii.  
Old Swinford, 17 Geo. 3, c. xix.  
Pontefract Honour, 2 & 3 Vict. c. lxxxv.  
Poulton, 10 Geo. 3, c. xxi.

Rochester, 48 Geo. 3, c. li.  
Saint Albans, 25 Geo. 2, c. xxxviii.  
Saint Briavels, 5 & 6 Vict. c. lxxxiii.  
Sandwich, 47 Geo. 3, c. xxxv.  
Sheffield, 48 Geo. 3, c. ciii.  
Shrewsbury, 23 Geo. 3, c. lxxiii.  
Southwark & East Brixton, 4 G. 3, c. cxxiii.  
Stockport, 46 Geo. 3, c. cxiv.  
Tower Hamlets, 2 Will. 4, c. lxx.  
Westbury, 48 Geo. 3, c. lxxxviii.  
Westminster, 24 Geo. 2, c. xlii.  
Wight, Isle of, 46 Geo. 3, c. lxxvi.  
Wolverhampton, 48 Geo. 3, c. cx.  
Wraggöe, 19 Geo. 3, c. xliii.  
Yarmouth, Great, 31 Geo. 2, c. xxiv.

**(SCHEDULE (B.))**

Acts for the more easy and speedy Recovery of Small Debts within the Towns, Parishes, and Places under written, and other Parishes and Places adjacent thereto; (that is to say,) Aberford, 2 & 3 Vict. c. lxxxvi.; 3 Vict. c. xxxiii.

Ashby-de-la-Zouch, 1 Vict. c. xv.  
Barnsley, 1 & 2 Vict. c. xc.  
Belper, 2 & 3 Vict. c. xcvi.  
Blackburn, 4 & 5 Vict. c. lxxvii.  
Blackheath, 6 & 7 W. 4, c. cxx; 1 & 2 Vict. c. lxxxix.  
Bolton, 3 Vict. c. xviii.  
Brighton, 3 Vict. c. x.  
Burnley, 4 & 5 Vict. c. lxxxiii.  
Bury, 2 & 3 Vict. c. ci.  
Chesterfield, 2 & 3 Vict. c. civ.  
Creditor, 8 & 9 Vict. c. lxxix.  
East Retford, 4 & 5 Vict. c. lxxxvii.  
Eckington, 2 & 3 Vict. c. ciii.  
Exeter, 4 & 5 Vict. c. lxxiii.  
Gainsburgh, 4 & 5 Vict. c. lxxxvi.  
Glossop 2 & 3 Vict. c. lxxxviii.  
Grantham, 2 & 3 Vict. c. lxxxix.  
Halifax, 2 & 3 Vict. c. cvi.  
Hatfield, 4 & 5 Vict. c. lxxiv.  
Hinckley, 7 Will. 4, c. viii.  
Hyde, 3 & 4 Will. 4, c. cxix.  
Kingsnorton, 4 & 5 Vict. c. lxxv.  
Launceston, 4 & 5 Vict. c. lxxvi.  
Leicester, 6 & 7 W. 4, c. cxxiii; 7 W. 4, c. vii.  
Loughborough, 7 Will. 4, c. ix.  
Newark, 4 & 5 Vict. c. lxxix.  
New Sarum, 4 & 5 Vict. c. lxxxiv.  
New Sleasford, 4 & 5 Vict. c. lxxxv.  
Newton Abbott, 3 Vict. c. xxv.  
Nottingham, 2 & 3 Vict. c. cv.  
Oakham, 1 Vict. c. xxxvi.  
Prestbury Division of the Hundred of Macclesfield, 6 Will. 4, c. xiii.  
Prestwich-cum-Oldham, 2 & 3 Vict. c. c.  
Rotherough, 7 Will. 4, c. lxii.  
Rochdale, 2 & 3 Vict. c. xc.  
Rotherham, 2 & 3 Vict. c. lxxxviii.  
Saint Helen's, 4 & 5 Vict. c. lxxxii.  
Staffordshire Potteries, 4 & 5 Vict. c. lxxxi.  
Tavistock, 3 Vict. c. lxxvii.  
Totnes, 4 & 5 Vict. c. lxxx.  
Warrington, 2 & 3 Vict. c. xci.  
Westminster, 6 & 7 W. 4, c. cxxxvii.  
Wigan, 4 & 5 Vict. c. lxxviii.  
Wirksworth, 2 & 3 Vict. c. cii.

## SCHEDULE (C.)

Town.	Officer of the Court.	Person to whom the next Appointment is to belong.
Ashton-under-Lyne	Clerk of the Court to be holden at Ashton	Lord of the Manor of Ashton-under-Lyne.
Birmingham	High Bailiff of the Court to be holden at Birmingham	Lord of the Manor of Birmingham.
Cirencester	Clerk of the Court to be holden at Cirencester	Lord of the Manor and Seven Hundreds of Cirencester.
Kidderminster	Clerk of the Court to be holden at Kidderminster	Lord of the Manor of the Borough of Kidderminster.
Stourbridge	Clerk of the Court to be holden at Stourbridge	Lord of the Manor of Old Swinford or Amblecoat, to whom, on the day before the passing of this Act, the next Turn belongs to appoint the Clerk or Beadle of the Court of Requests for the Parish of Old Swinford.
St. Albans	High Bailiff of the Court to be holden at Watford	Lord of the Hundred of Cashio.
Sheffield	Judge of the Court to be holden at Sheffield	Lord of the Manor of Sheffield.
	Clerk of the Court to be holden at Sheffield	Lord of the Manor of Ecclesall.
Stockport	Clerk of the Court to be holden at Stockport	Lord of the Manor and Barony of Stockport.

## SCHEDULE (D.)

	AMOUNT OF DEMAND.					
	Not exceeding 20s.	Exceeding 20s. and not exceeding 40s.	Exceeding 40s. and not exceeding £5.	Exceeding £5. and not exceeding £10.	Exceeding £10.	
					Founded on Contract.	Founded on Tort.
<b>JUDGE'S FEES.</b>						
Every summons	s. d. 0 3	s. d. 0 6	s. d. 1 0	s. d. 2 0	s. d. 3 0	s. d. 3 0
Every hearing without a jury	1 0	1 6	2 6	7 6	10 0	15 0
Every hearing or trial with a jury	2 0	3 0	5 0	10 0	15 0	20 0
Every order or judgment or application for an order.	0 3	0 6	1 0	2 0	3 0	3 0
<b>CLERK'S FEES.</b>						
Entering every plaint and issuing the summonses thereon	0 3	0 6	1 0	2 0	3 0	3 6
Every subpoena, when required	0 3	0 6	0 9	1 0	1 6	1 6
Every hearing, trial, or nonsuit without a jury	0 4	0 6	1 0	1 6	2 0	3 6
Adjournment of any case	0 3	0 4	0 6	1 0	2 0	2 0
Entering and giving notice of special defence	0 3	0 6	1 0	1 6	2 0	2 0
Swearing every witness for plaintiff or defendant	0 2	0 2	0 3	0 4	0 6	1 0
Entering and drawing up every judgment and order, and copy thereof	0 3	0 6	1 0	1 6	2 6	3 0
Payment of money in or out of court, whether or not by instalments at different times, including notice thereof, and taking receipt	0 2	0 4	0 6	—	—	—

N. B.—Where the plaintiff recovers less than his claim so as to reduce the scale of costs, the plaintiff to pay the difference.

	AMOUNT OF DEMAND.					
	Not	Exceeding	Exceeding	Exceeding	Exceeding £10.	
	exceeding 20s.	20s. and not exceeding 40s.	40s. and not exceeding £5.	£5. and not exceeding £10.	Founded on Contract.	Founded on Tort.
<b>CLERK'S FEES—continued.</b>						
Paying money into court, and entering same in books, and notice thereof, or of sum in full satisfaction having been paid into court, each instalment or payment	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
Payment of money out of court, and taking receipt, exclusive of stamp	—	—	—	0 6	0 8	1 0
Every search in the books	—	—	—	0 9	1 0	1 6
Issuing every warrant, attachment, or execution	0 2	0 2	0 4	0 6	1 0	1 0
Supersedeas of execution, or certificate of payment, or withdrawal of cause	0 6	0 6	1 0	1 6	2 6	3 0
Warrant of commitment for an insult or misbehaviour in court	0 3	0 6	0 6	1 0	1 6	2 0
Entering and giving notice of jury being required	1 0	1 0	1 0	1 0	1 0	1 0
Issuing summons for jury	0 6	0 9	1 0	1 6	2 0	2 6
Swearing jury	0 6	0 9	1 0	1 6	2 0	2 6
Every hearing, trial, or nonsuit with a jury	0 6	0 8	0 10	1 0	1 6	1 6
Taking recognizance or security for costs	1 0	1 6	2 0	3 0	5 0	7 16
Inquiring into sufficiency of sureties proposed, and taking bond on removal of plaint, or grant of new trial, or other occasion	—	—	—	2 0	2 6	3 0
Taxing costs	2 6	2 6	2 6	2 6	2 6	2 6
	—	—	—	1 0	2 0	3 0
<b>HIGH BAILIFF'S FEES.</b>						
Calling every cause	0 2	0 3	0 4	0 6	1 0	1 6
Affidavit of service of summons out of the jurisdiction	0 2	0 3	0 6	1 0	1 6	2 0
Serving every summons, order or subpoena within one mile of court house	0 3	0 4	0 6	0 10	1 0	1 6
If above one mile, then extra for every other mile	0 2	0 2	0 3	0 4	0 4	—
Execution of every warrant, precept, or attachment against the goods or body within one mile of the court house	1 6	2 6	3 6	4 0	5 0	7 0
If above one mile, then extra for every other mile	0 3	0 3	0 4	0 6	0 6	0 6
If two officers be necessary in the judgment of the court, then extra, within one mile of the court house	1 0	1 6	2 0	2 0	2 6	3 0
If above one mile, then extra for every other mile	0 3	0 3	0 4	0 6	0 6	0 6
Keeping possession of goods till sale, per day, not exceeding five days	1 0	1 6	2 0	2 0	2 6	3 0
Carrying every delinquent to prison, including all expenses and assistants, per mile	1 0	1 0	1 0	1 0	1 0	1 0
Issuing warrant to clerk of another court	1 0	1 6	2 0	2 6	3 0	3 6

N. B.—The several fees payable on proceedings in replevin to be regulated on the same scale by the amount distrained for, and on proceedings for the recovery of tenements by the yearly rent or value of the tenement sought to be recovered.

## ASSESSMENT OF COMPENSATION UNDER RAILWAY ACTS.

THE unsatisfactory state of the law, as regards proceedings for the assessment of compensation, or damages to the owners of property whose rights have been interfered with by railway companies, has been incidentally adverted to in a former number;<sup>a</sup> but as a distinct governmental department is now established to which the superintendence of railway legislation is especially confided, it may not be amiss more particularly to direct attention to the existing state of this branch of the law.

As many of our readers are no doubt aware, when a dispute arises between the owner of land and any Railway Company in respect of the amount of the purchase money, or compensation claimed by the former, under the general provisions of the Land Clauses Consolidation Act,<sup>b</sup> and by special provisions in all antecedent Railway Acts, whenever the amount claimed exceeds the sum of £50, the course of proceeding is as follows:—The company issue their warrant to the sheriff calling upon him to summon a jury, which jury is impanelled and sworn to inquire of, and assess the amount of compensation or damage, and the sheriff gives judgment for the purchase money or compensation assessed by the jury, and the verdict and judgment signed by the sheriff become records. If the sheriff should decline or refuse to hold an inquiry, the Court of Queen's Bench may grant a mandamus to compel him, as in the case of *Walker v. The Blackwall Railway Company*,<sup>c</sup> but where an inquisition has been taken, and there is a finding of the jury under any circumstances, the courts are prohibited from interference; for by the 145th section of the Land Clauses Consolidation Act, and by a similar provision in all the railway acts of an earlier date, no proceeding under such act or acts is removeable "by certiorari or otherwise into any of the superior courts." It was at one time contended, that the clauses in these acts taking away the certiorari, applied only to convictions for penalties;<sup>d</sup> but it has been established by a series of decisions, that clauses of this nature are

applicable to inquisitions.\* The result appears to be, that if a jury presided over by the under sheriff, return a verdict, giving the claimant the most excessive and exorbitant amount of compensation, the finding is nevertheless conclusive against the company; whilst on the other hand, if the claimant who has been compulsorily deprived of his property, or his rights injuriously affected, has an inadequate or insufficient amount of compensation—or indeed as it would seem no compensation at all—awarded to him by the verdict of a jury, he is left without any legal remedy.

In a late case of *the Queen v. the Lancaster and Preston Railway Company*† the company issued a warrant to the sheriff of the county palatine of Lancaster, directing him to return a jury for the purpose of inquiring of, assessing, and giving a verdict for the sum of money, if any, to be paid to one James Cottam by way of satisfaction or compensation, &c., and an inquisition having been taken in pursuance of the warrant, the jury found by their verdict, that James Cottam had not sustained any damage by reason of the execution of the company's works, and the sheriff gave judgment accordingly. An application was subsequently made to the Court of Queen's Bench, for a certiorari to remove the inquisition into that court, chiefly upon the ground that the jury had given no damages. It was argued in support of the application, that by issuing their warrant, the company had admitted the fact of some damage, and if that fact was disputed, the proper course was to have refused to issue their warrant, and the matter might have been determined upon an application for a mandamus. The province of the jury, it was urged, was to inquire as to the amount of damage, and not whether the claimant had suffered any damages at all, and by inserting the words "if any" in the warrant, the inquiry was transferred to a tribunal which it was not contemplated should entertain such questions, and which was unfitted for their determination. The hardship of the case was also pressed upon the court, as the finding of the jury was conclusive, and there was no mode of applying for a new trial. The court however, was unanimously of opinion, that a certiorari did not

<sup>a</sup> See Leg. Obs. July 18, p. 257.

<sup>b</sup> 8 & 9 Vict. c. 18.

<sup>c</sup> 3 Q. B. 744.

<sup>d</sup> *The Queen v. The Sheffield Railway Co.* 11 Ad. & El. 194.

\* *R. v. The Justices of the West Riding*, 1 Ad. & El. 563; *R. v. The Bristol and Exeter Railway Co.* 11 Ad. & El. 202, n.

† 6 Q. B. 759.

lie. It would have been better, said the learned judges, if the words "if any" had been omitted, but their insertion did not affect the validity of the warrant, and the question whether any damage had been sustained or not, was inseparable from the question, how much damage had been sustained?

Approving as we venture to do of the decision of the Court of Queen's Bench in the case cited, because it must be matter of indifference to a claimant whether a jury determines that he has not sustained any damage, or awards him damages merely nominal, as a shilling or a farthing, which a jury in such a case is clearly at liberty to do; and not in the remotest degree questioning the propriety and justice of the conclusion at which the jury arrived in that particular case, we repeat that it is a serious defect in the law, that the finding of a jury under any circumstances, in cases involving questions of such magnitude, should be positively conclusive.

During a considerable portion—perhaps we might say one half—of every term, the three superior courts of common law are engaged in the consideration of applications for new trials. The cases in which new trials are granted, without any possible reflection upon the intelligence or impartiality of the jury, are numerous. If the exercise of this power by the courts is necessary for the furtherance of justice in ordinary cases, where the deliberations of a jury are controlled and directed by the presence and direction of a judge of one of the superior courts, it cannot be unnecessary in compensation cases. In those cases, as in trials at *nisi prius*, or the assizes, the one party or the other is liable to be taken by surprise, or is inadvertently or unavoidably prevented from producing evidence of some material fact. An important witness is absent from accident or design. It may be that the counsel whom the claimant has selected to explain to the jury the grounds upon which he deems himself entitled to call upon them for a liberal measure of compensation, has by some unforeseen fatality neglected to make his appearance before the under sheriff and jury at the proper time, and that no adequate substitute can be found at the moment. In all these cases, there may be a miscarriage of justice, and if there be, is it not monstrous that the law affords no means for setting the matter right? We have been supposing the case of a jury giving a just and conscien-

tious verdict, which verdict is nevertheless excessive or inadequate from the defective nature of the materials upon which the jury has been required to form an opinion, or where those materials have been presented to them in an imperfect and unsatisfactory manner. There is another view of the question. Railway companies, and proceedings adopted under their direction, are peculiarly the subject of local prejudices. We should be averse to insinuate that those who serve on compensation juries are likely to any considerable extent to be unduly influenced by previous prepossessions, but jurors, like other men, partake of the feelings which actuate those amongst whom they live; and it is notorious, that in many districts great local advantages are expected to be derived from the establishment of railroads. It is just possible that the prevalence of such a feeling may unconsciously influence a juror to underrate the claims of a party who was considered to have thrown any impediments in the way of proposed public improvement.<sup>(\*)</sup> All that is now contended for is, that the verdicts of juries in compensation cases, should be subject to the supervision and control of the judges of the superior courts, as in other cases affecting property; and we desire to see this reform of the law established, before the necessity for it is rendered manifest by the occurrence of cases of clear and irreparable injustice.

## INTERNATIONAL COPYRIGHT.

### ORDERS IN COUNCIL.

(Commencing 1st September.)

### TREATY WITH PRUSSIA.

At the Court at Osborne House, Isle of Wight, the 27th day of August, 1846;

Present—The Queen's most excellent Majesty in council.

Whereas a treaty has been concluded between her Majesty and the King of Prussia, whereby due protection has been secured within the Prussian dominions for the authors

(\*) It was stated in the daily newspapers, during the last week, that in a town in the county of Kent, where a compensation jury had awarded a less sum to the owner of property than the company had offered, the present learned attorney-general, who represented the company, was loudly cheered by the people upon quitting the place of inquiry, the proposed railroad, it was said, being extremely popular with the working classes, who supposed it would benefit them.

of books, dramatic works, or musical compositions, and the inventors, designers, or engravers of prints and articles of sculpture, and the authors, inventors, designers, or engravers of any other works whatsoever of literature and the fine arts, in which the laws of Great Britain and of Prussia do now or may hereafter give their respective subjects the privilege of copyright, and for the lawful representatives or assigns of such authors, inventors, designers, or engravers, with regard to any such works first published within the dominions of her Majesty.

Now, therefore, her Majesty, by and with the advice and consent of her privy council, and by virtue of the authority committed to her by an act, passed in the session of parliament holden in the seventh and eighth years of her reign, entitled, "An Act to amend the law relating to international copyright," doth order, and it is hereby ordered, that, from and after the 1st day of September, 1846, the authors, inventors, designers, engravers, and makers of any of the following works, (that is to say,) books, prints, articles of sculpture, dramatic works, musical compositions, and any other works of literature and the fine arts, in which the laws of Great Britain give to British subjects the privilege of copyright, and the executors, administrators, and assigns of such authors, inventors, designers, engravers, and makers, respectively, shall, as respects works first published within the dominions of Prussia, after the said 1st day of September, 1846, have the privilege of copyright therein for a period equal to the term of copyright which authors, inventors, designers, engravers, and makers of the like works, respectively, first published in the United Kingdom, are by law intitled to; provided such books, dramatic pieces, musical compositions, prints, articles of sculpture, or other works of art have been registered, and copies thereof have been delivered according to the requirements of the said recited act, within twelve months after the first publication thereof in any part of the Prussian dominions.

And it is hereby further ordered, that the authors of dramatic pieces and musical compositions which shall, after the said 1st of September, 1846, be first publicly represented or performed within the dominions of Prussia shall have the sole liberty of representing or performing in any part of the British dominions such dramatic pieces or musical compositions, during a period equal to the period during which authors of dramatic pieces and musical compositions first publicly represented or performed in the United Kingdom are entitled by law to the sole liberty of representing or performing the same; provided such dramatic pieces or musical compositions have been registered, and copies thereof have been delivered according to the requirements of the said recited act, within twelve calendar months after the time of their being first represented or performed in any part of the Prussian dominions.

C. C. GREVILLE.

At the Court at Osborne House, Isle of Wight, the 27th day of August, 1846;

Present—The Queen's most excellent Majesty in council.

Whereas, by an act, passed in the present session of parliament, entitled, "An Act to amend an Act of the 7th and 8th of her present Majesty, for reducing, under certain circumstances, the duties payable upon books and engravings," it is enacted, that whenever her Majesty has, by virtue of any authority vested in her for that purpose, declared that the authors, inventors, designers, engravers, or makers of any books, prints, or other works of art, first published in any foreign country or countries, shall have the privilege of copyright therein, it shall be lawful for her Majesty, if she think fit, from time to time, by any order in council, to declare that, from and after a day to be named in such order, in lieu of the customs from time to time payable on the importation into the United Kingdom of books, prints, and drawings, there shall be payable only such duties of customs as are mentioned in the said act.

And whereas her Majesty hath this day, by virtue of the authority vested in her for that purpose, declared that the authors, inventors, designers, engravers, and makers of books, prints, and certain other works of art, first published within the dominions of Prussia, shall have the privilege of copyright therein.

Now, therefore, her Majesty, by and with the advice and consent of her privy council, and in virtue of the authority committed to her by the said recited act, doth order, and it is hereby ordered, that from and after the 1st day of September, 1846, in lieu of the duties of customs now payable upon books, prints, and drawings, published at any place within the dominions of Prussia, there shall be payable only the duties of custom following, that is to say,—

On books originally produced in the United Kingdom, and republished at any place within the dominions of Prussia, a duty of 2*l.* 10*s.* per hundred weight.

On books published or republished at any place within the dominions of Prussia, and not being books originally produced in the United Kingdom, a duty of 15*s.* per hundred weight.

On prints and drawings, plain or coloured, published at any place within the dominions of Prussia,

Single each	· · · · ·	6 <i>d.</i>
Bound or sewn, the dozen	· · · · ·	1 <i>l.</i>

C. C. GREVILLE.

## LETTERS ON THE SMALL DEBTS ACT.

WE continue to receive various letters on different topics arising out of this act, and our attention has been directed to other communications which appear in the public journals,—

extracts from which it will be desirable to preserve in these columns.

It has rarely been our duty to notice a subject of so much importance as this act, which on many accounts has excited a warm interest amongst the profession in general. "Out of evil, good may come."

#### JUDICIAL QUALIFICATION OF ATTORNEYS.

It is surprising to hear the members of the legal profession in both houses vaunting the legal knowledge of the barristers over attorneys, the latter having no one in the house to defend them.

An attorney before he can be admitted to practice must be in actual service five years practising the law, and, moreover, be examined touching his knowledge of the law; whilst a barrister has only to enter his name at one of the inns of court, and at the end of five years, having duly eaten his way, without having had any practice, and without any examination as to his knowledge of the law, and even without having read a single law book, is deemed eligible to be, and some are so, called to the bar, and thus become qualified for appointment as a judge.

That legal knowledge and experience are not required was admitted by the Judge-Advocate on a recent appointment being complained of by Lord George Bentinck, for he defended the appointment solely on the ground of the knowledge of the law which the gentleman in question had acquired from having been so many years secretary to Lord Lyndhurst. Now, the Judge-Advocate knows, as every attorney's clerk does, that the legal part of the business of the secretary is common routine, and transacted by his clerk at a small salary in Quality Court, and that the secretary's chief business is personal attendance upon the Chancellor, and attending to his correspondence as other secretaries do.

This bill ought more properly to have been entitled a bill to create patronage for the appointment of younger sons of the aristocracy and dependents upon learned lords. It is a job, and nothing but a job, as time and the appointments will show.

#### A SOLICITOR OF TEN YEARS' STANDING.

#### JURISDICTION OF THE COURTS.

This act appears to be founded upon the fifth report of the Common Law Commissioners presented to parliament so long ago as the year 1833. Two of those commissioners were the Chief Baron Sir Frederick Pollock and Mr. Justice Wightman.

Among the exceptions to the jurisdiction of any Small Debts Act, the Common Law Commissioners recommend that there should be an exception of all cases involving any title under a commission of bankruptcy, but those cases are not included among the exceptions to the jurisdiction in the present act; and it

must be considered, as there is in these courts *no plea*, whether the 19th section of the 49 Geo. 3, c. 121, is applicable in these courts.

#### JUDGES PRACTISING AT THE BAR.

The commissioners by their report recommended that the judges of these courts should be excluded from private practice.

This must have been intended as a general exclusion, but so far from its having been followed in the act, the prohibition in the 17th section is only to practising in the district of the court, with an exception, even there, in favour of those barristers already appointed to preside in or hold courts in Bath, Bristol, Liverpool, Manchester, Sheffield, Ecclesall, and Middlesex, and now practising in chambers, as conveyancing counsel, who may continue such practice.

Anything worse in principle than is engendered by this section and its exceptions, it is hardly possible to conceive.

The judge may be asked in chambers, with a fee, to write an opinion upon any or every case that is to come before him as judge, and his office will insure him all the conveyancing and all the business in the superior courts of those who are to practise in his court, and if justice should be administered and not be sold, the public will certainly have to thank the judges and not the legislature.

#### PROCEEDING TO TRIAL.—NOTICE OF DEFENCE.

The 59th section provides that the clerk of the court is to enter in a book, to be kept for that purpose, a plaint, stating the names and last known places of abode of the parties, and the substance of the action intended to be brought, and thereupon a summons, stating the substance of the action, is to be issued, under the seal of the court, according to such form, and be served on the defendant so many days before the day on which the court shall be holden on which the cause is to be tried, as shall be directed by the rules for regulating the practice of the court as thereafter provided.

The 74th section provides, that on the day in that behalf named in the summons, the plaintiff shall appear, and thereupon the defendant shall be required to appear to answer such plaint, and on answer being made in court, the judge shall proceed in a summary way to try the cause, and give judgment without further pleading or formal joinder of issue.

By section 75 it is enacted, that no evidence shall be given by the plaintiff on the trial of any such cause as aforesaid, of any demand or cause of action, except such as shall be stated in the summons thereby directed to be issued.

By section 76 no defendant shall be allowed to set off any debt or demand claimed, or recoverable by him from the plaintiff, or to set up by way of defence, and to claim to have the benefit of infancy coverture, or any statute of limitations, or of his discharge under any statute relating to bankrupts, or any act for relief of insolvent debtors, without the con-



sent of the plaintiff, unless such notice thereof as shall be directed by the rules made for regulating the practice of the court shall have been given to the clerk of the court, who is to communicate the same to the plaintiff.

By section 78, five of the judges of the superior courts, including one of the chiefs, have power to issue all the general rules for regulating the practice and proceedings of the county courts under the act, and also to frame forms for every proceeding in the said courts, for which they shall think it necessary that a form be provided, and in any case not expressly provided for by the act or by the said rules, the general principle of practice in the superior courts of common law may be adopted and applied at the discretion of the judges, to actions and proceedings in their several courts.

The license here given in the cases not provided for to each judge in his own court to adopt, and apply or reject at his discretion, the general principles of the practice of the superior courts, seems to be one of the most extravagant provisions that ever found its way into an act of parliament.

The general rules for regulating the practice to be made by judges of the superior courts must be consistent with the practice of these courts as laid down in the act of parliament. The defendant is, by the act, required to plead nothing, and on his answering, the judge is to try the cause; the whole proof of the case will therefore be thrown upon the plaintiff, as if the general issue had been pleaded, and the defendant may also, without any notice to the plaintiff, except in the excepted cases contained in the 76th section, avail himself of every and of the most complicated defence to the action.

This is wholly at variance with the recommendations on the subject contained in the 5th report of the Common Law Commissioners, who recommended in effect, that notices should be given of all defences which in the superior courts would have required a special plea.

When the demand is for soap and candles there may be no inconvenience in thus throwing so much proof upon the plaintiff, inasmuch as by the 83rd section of the act, it is provided that on the hearing or trial of any action, the parties thereto, their wives, and all other persons, may be examined either on behalf of the plaintiff or defendant (a provision which, it is needless to say, was not recommended by the Common Law Commissioners), but suppose the action to be upon a bill of exchange against an indorser, or other more complicated cases of action, the parties and their wives will little assist in furnishing the requisite proof, which (by requiring notice to be given by defendant of his defence, and by dispensing by enactment with all proofs consistent with the defence in the notice, as if the defence had been pleaded) might well and reasonably have been dispensed with.

#### COSTS.

There is in the 88th section a most outrage-

ous provision, that all the costs of any action or proceeding in the court not therein otherwise provided for, shall be paid by or apportioned between the parties in such manner as the judge shall think fit, and in default of any special direction shall abide the event of the action.

If the judge think fit to exercise himself in these special directions as to costs, he will want little other occupation, and it may lead to the grossest tyranny, and with the best intentions to the most grievous injustice; but suppose the judge to be a practising conveyancer in the district, here is a pretty field of discretion.

R.

### PROPERTY LAWYER.

#### REVERSIONARY INTERESTS OF MARRIED WOMEN.

OUR attention has lately been drawn to a pamphlet by Mr. Swinburne, on the means of dis-settling and dealing with personal funds settled upon trusts, involving reversionary interests in married women.\*

The learned writer notices the difficulty of dealing with these reversionary interests—a difficulty which has often barred the completion of many important transactions, and he contends, after much attentive consideration, that the law in the mode he suggests, affords the means of dis-settling personal funds involving the reversionary interests of married women.

"In the simple case of a fund settled on A for life, with remainder to B, a married woman, the Profession has for some time been advised that by A's surrendering his life interest to B she would become entitled to the entire immediate interest in the fund, which would accordingly become disposable by her husband, like any other immediately recoverable *chose in action*; but it would appear that, previously to the case which the writer is about to introduce to the reader, it had never been attempted to effect the dis-settlement of a fund standing in any other than the particular position just mentioned; and the actual instances of dissettlement, even under these circumstances, appear to have been very few.

"Early in the year 1844, the writer was called upon to advise on the means of making a title to a fund which stood settled upon trusts, involving reversionary interests in a married woman, under circumstances of great complexity.

"He had always considered that defects attached to the above stated mode of proceed-

\* By Thomas Swinburne, M. A., of Lincoln's Inn, Barrister. London: Blankam, 1846.

ing which rendered it unsafe for trustees, even in the simple case above put, to part with the fund without the sanction of a court of equity; and the nature of the objection seemed to be such, that the authority of the court could not serve as a justification in any other than the particular case in which it might be obtained. These impressions, and the urgent circumstances of the case before him, induced the writer to seek for some improved course of operation, when that presented itself, which he now ventures to lay before the profession."

The facts of the case on which the question arose were as follow:—

"On the marriage of G. H., Esq., with Miss M. W. W., a sum of 15,000*l.* (the property of Mr. H.) was vested in trustees upon trust, to pay unto, or permit Mr. H. to receive the interest and dividends for his life, and immediately after his decease, in case the said M. W. W. should survive him, upon trust to pay unto, or permit her to receive, the said interest and dividends during the then remainder of her life; and on the decease of the survivor of Mr. H. and his said intended wife, upon trust for the children of the marriage, as the parents or the survivors should appoint, &c., and in default of children, then, in case the said M. W. W. should survive her intended husband, upon trust for the said M. W. W., her executors, administrators, and assigns; but in case she should happen to die in the lifetime of the said G. H., upon trust for the said G. H., his executors, administrators, and assigns.

"Mr. H., some time since granted two annuities respectively determinable on his death, and assigned his life interest in the before mentioned sum of 15,000*l.*, for securing the payment of the same. The surplus interest and dividends of the fund, after paying the annuities, amount to 160*l.* 1*s.* 8*d.*, which (subject to some charges of arrangement) are paid to Mr. H.

"Mr. and Mrs. H. have never had, and in the ordinary course of nature, cannot now expect to have, any child, and they are desirous of disposing of a part of this sum of £15,000, or of borrowing money upon it. It has been suggested that, as the trusts involve reversionary interests in a married woman, this cannot be done; but there was the most urgent necessity that a sum of money should be immediately raised upon the surplus income and on the reversion."

Under these circumstances, Mr. Swinburne thus advised his clients:

"I have never known or heard of a good title being made in case of a fund situated as this 15,000*l.* is, though the occasion must often have arisen, but, I know no other reason why it cannot be done; for, upon principle, it appears to me, that if Mr. H. were to assign all his interest in the fund to a trustee, upon such trusts as Mrs. H. should appoint, and Mrs. H.

were afterwards to appoint in favour of herself, her executors, or administrators, Mrs. H. would acquire an immediate absolute interest in the fund subject to the annuities, and the now next to impossible contingency of the birth of children; and that the fund so subject, would be brought within the disposition of Mr. H.; and if with the consent of the annuitants, it were to be transferred to Mr. H. and a trustee for the annuitants, or to a purchaser and such trustee, a reduction into possession would be effected, and all claim of Mrs. H. in the event of her surviving Mr. H. would be defeated. I have never known an instance of a settlement with such limitations, being unlocked in this way, but the result appears to me inevitable."

This course of proceeding having been submitted to a very distinguished conveyancer, he was of opinion that the plan suggested would be as effectual as it was novel, and that there would be no occasion for the purchaser to incur the expense of any insurance.

Mr. Swinburne then states, that a difficulty arose from the recent case of *Box v. Box*, 2 Con. and Law, 605 (Irish Reports;) and he was requested to review his opinion. He says,

"At the time of writing on this case, I was under an impression—which I still retain—that the somewhat questioned case of *Pickard v. Roberts*, 3 Mad. 384 was rightly decided, and that any case like *Box v. Box* would be, or at least ought to be, decided as *Box v. Box* has been. In the case just mentioned, it was attempted directly to transfer or deal with the wife's reversionary interest. According to the course recommended by me, there would be no attempt directly to transfer or deal with Mrs. H.'s reversionary interest, that interest would be affected only by the indirect, and as it is apprehended, sure and uncontrollable operation of law. In *Box v. Box*, the tenant for life applied to have the fund transferred to her on the consent of the feme covert reversioner. That was not like our case. If the tenant for life had assigned her interest to a trustee upon trust as the feme covert reversioner should appoint, and afterwards the feme covert had made an appointment in favour of herself, the case would have been like ours in principle, and the feme covert either with or without a subsequent assignment of the fund to the tenant for life, would have appeared before the court as a wife entitled not to a reversionary interest, but to an immediate absolute interest in the fund, and her consent would have been required not for the purpose of passing away her legal right, but merely for the purpose of waiving her equity as to part of the fund. It was certainly most studiously attempted to suggest a course which might substantially separate this case in principle, from such cases as *Pickard v. Roberts*, *Box v. Box*,

and I may add, *Doswell v. Earle*, 12 Ves. 473, and I cannot help thinking that that object has been attained. The distinction above shown removes every appearance of contrariety between the case of *Box v. Box* and *Bean v. Sykes*, 2 Hayes' Intro. to Convey. 642, 5th Edit., and *Lacton v. Adams*, 14 Law Journ. 384. It will be sufficient to state the latter only. There, a feme covert entitled to a reversionary interest in a fund in court, obtained a surrender from the tenant for life. An application was made to the court for a transfer of the fund (partly to the husband,) on the ground, that 'it was no longer reversionary,'—see 14 Law Journ. 384,—and the Vice Chancellor made the order. It appears that the Vice Chancellor's Court, rose for the long vacation, before the consent of the feme covert was taken, and that, the Lord Chancellor continuing to sit, an application was made before him, to take the consent, when his lordship said, 'The life estate had merged and the interest of the married woman was no longer reversionary.' And he took the consent, and made the order. (See 14 Law Journ. ub. su.) Here the court was asked to order the transfer of a married woman's fund in possession, on her consent to waive her equity to a settlement. In *Box v. Box*, the court was asked to pass away a married woman's legal right to a reversionary interest, on her consent so to pass it. The facts show that the two cases are not *ejusdem generis*."

It was then suggested that there was no occasion to sell or mortgage any part of the fund, but that it would be better for the trustees to sell out the stock, pay off the charges out of the produce, and pay over the surplus to the husband. The author was instructed to prepare the necessary deeds for carrying the proposed scheme into effect, and ultimately the fund was transferred by the trustees.

We must refer to the pamphlet for a warm controversy between Mr. Swinburne and a third conveyancer, to whom the question was submitted. Our author we think takes too much to heart the cautious difficulties raised by his opponent,—treats somewhat harshly his old-fashioned objections, and rides the novel expedient he has discovered with a high hand.

## THE LAW STUDENT.

### No. 9.

#### LEGAL EDUCATION AT THE INNS OF COURT.

THE intended courses of lectures at the several Inns of Court, the plan of which we stated in our number for the 15th August, (p. 361, *ante*), will constitute the first important step in legal education for the bar. The next step will be an efficient examination—1st,

of special pleaders and conveyancers under the bar; and 2ndly, of barristers. No certificated conveyancer should be allowed to practise until he has undergone a thorough examination in the law of property and the practice of conveyancing; and he should be limited to preparing drafts and advising on cases and abstracts. He should not be allowed to practise as a solicitor in negotiating purchases and sales, mortgages, &c., conducting correspondence, making attendances, journeys, &c.

Whilst the plans of legal education are under consideration, it may be useful to record some of the strictures which have appeared in the public journals. We select for the present the following editorial remarks of the *Times* of the 1st September:—

"Some resolutions agreed to by the Societies of Lincoln's Inn, the Inner Temple, and Gray's Inn, for the improvement of the existing system of education for the bar, appeared in our paper of yesterday. We cannot congratulate the committees of the three learned bodies on the result of their labours. It is almost impossible to suggest a more meagre scheme of legal education than that which has been put forward.

"It proposes the establishment of four lectureships, in addition to the one already founded by the Middle Temple. This seems at first sight a very considerable step in advance of the present system, and appears to quintuple the means of professional instruction held out to the student by the regulations of the benchers. The advantage of five lectureships is, however, diminished more than fifty per cent. when we find that, as a condition of being called to the bar, it will only be necessary to produce a certificate of having attended two of the courses of lectures.

"The benefit of the new regulation is further reduced to almost *nil* when we perceive that no examination is to be required of any student as a condition of his being called to the degree of a barrister. Of what possible utility can it be to prescribe attendance at lectures, unless a subsequent examination of the student takes place for the purpose of ascertaining whether he has gained any knowledge of the profession he seeks to enter? The mere fact of listening to, or being present during the delivery of, a discourse does not necessarily presume that information has been acquired. It may happen that the words of the lecturer have, familiarly speaking, gone in at one ear and out at the other, or perhaps not have found even the most temporary admission to the head of the student. The production of a certificate of attendance at two courses of lectures may be easily achieved by any one who has been in the habit of taking a nap, making pen and ink sketches of the surrounding objects, or whiling away the hour of the lecturer's lucubration in any other of the numerous ways that are in

common-use among students in general. There, seems to be literally nothing gained by the resolutions agreed to by the three inns for the improvement of the system of legal education. Such as are not disposed to undertake the diligent study of the profession will not be attracted to it by a compulsory attendance at a few lectures, which are to be followed by no examination, and will, therefore, be regarded by the idle as a most unnecessary bore, that must be endured, but which may be mitigated by allowing the mind to wander as far away as possible. Those who would attend the lectures with a zealous wish to profit by them would no doubt be equally desirous to gain a knowledge of their profession if no such lectures were in existence, and would seek instruction in the channels that are already open to all who have the means and the inclination to resort to them. There is little in the suggested new method to encourage the industrious pupil, and nothing at all to prevent the idle and ignorant from attaining the rank of barrister. Two courses of lectures must be attended, but they need not be attended to; and though a candidate for the bar must have been corporally present, he may have been as mentally absent as if he had never thought of the merest rudiments of legal education.

"It is not by such rules as those referred to that the bar will improve its position in public opinion, or have credit given to it for consisting of men who possess at least some qualification for the occupation they monopolize. The new regulations are the same in spirit as those which now require the presence of the student at a certain number of meals as the guarantee of his being fit for the privilege of practising as a barrister. A man may as well be bound to attend a dinner as a lecture, when no proof is required of his having derived any knowledge from the latter. The dining may indeed be rather the higher ordeal of the two, for a man might betray during social intercourse in the hall of his inn some manifest unfitness for the bar, which would perhaps never be developed in the course of attendance at a lecture-room. Conversation and manners would develop disqualifications, but presence during the delivery of a certain number of discourses on the law can be no criterion of qualification when no examination as to the proficiency of the student is to be required. We regret to find that there is so little disposition shown by the Inns of Court to make any substantial improvement in the system of legal education.

"The public interest requires some guarantee of qualification, especially with reference to the bar, for it happens in numerous instances that *important offices are, by act of parliament, to be given exclusively to barristers*. Such being the case, it becomes doubly necessary to demand, on the part of those going to the bar, some proof of proficiency. Those whom the legislature favours by considering *ex officio* adapted for the holding of any very lucrative appointments ought, at all events, to give some ground for the confidence reposed in them. It should

be at least imperative on them to qualify for the rank which entitles its possessor to so many advantages in the distribution of profitable employment. '*Barristers of seven years' standing*' are very often little better than gentlemen who have gone to the bar without the smallest professional knowledge, with the intention of qualifying themselves perhaps for some snug berth by serving a seven years' apprenticeship of utter brieflessness. Had they been required to know something of the law before they were called, they might perhaps have never been called at all, and so left the office for which standing is needed to some better adapted for the duties and more deserving the emoluments of public employment. Standing is indeed very often a misnomer, for it applies not unfrequently to those who have scarcely ever been upon their legs in a court of justice."

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Queen's Bench.

(Before the Four Judges.)

*The Queen v. The Inhabitants of Newton Ferrars.*

PRACTICE.—CERTIORARI.

*A judge in vacation may grant a rule for a certiorari, absolute in the first instance, to bring up an order of sessions where no case has been reserved by the sessions for the opinion of the court.*

IN this case an order of magistrates, for the removal of a pauper, was confirmed on appeal, and the sessions refused a case for the opinion of this court. A certiorari was afterwards applied for in vacation to bring up the order of sessions, and the original order of removal, which was granted absolute in the first instance. A rule *nisi* having been obtained to quash both the orders, the case came on for argument in the Crown Paper.

Mr. Greenwood and Mr. Merivale showed cause. Where a case is granted by the sessions, the writ of certiorari issues, as a matter of course; but where no case is reserved by the sessions, and the writ issues in vacation, the fiat for the certiorari ought to have been granted *nisi* only. In *Rex v. Chiffing Sodbury*,<sup>a</sup> the sessions did not grant a case, and it was held that a judge's order or fiat for a certiorari to issue in vacation can only be granted *nisi*. In Corner's Crown Practice, 72, reference is made to the case of *Rex v. Chiffing Sodbury*, and it is there said that it is not the present practice for a fiat for a certiorari to be granted out of term absolutely. In Archbold's Crown Office Practice, 166, there is no doubt a different rule laid down, but the practice for the rule to be absolute in the first instance seems unreasonable, because now no opportunity is afforded the opposite party of

<sup>a</sup> 3 Nev. & Man. 104.

taking the objection of the want of notice to the justices who made the original order.

Mr. Rowe contra.—The practice is that the judge has power in the exercise of his discretion, either to grant a rule for a certiorari absolute in the first instance, or he may afford the party an opportunity of showing cause against the rule. There seems to be conflicting opinions as to this point of practice in the works on the practice of the Crown Office. If there is any irregularity in the discretion exercised by the learned judge, the proper mode of objection is by applying for a rule to quash the certiorari *quia improvidè emanavit*, and then both rules would come on together for argument. (Stopped.)

Lord Denman, C. J. If the case of *Rex v. Chisling Sodbury* has been correctly reported, it has been wrongly decided.

Patteson and Williams, J.'s concurred.

The objection being overruled, the court proceeded to hear the case on the validity of the order of sessions.

### Eschequer.

*Cromer v. Churt*. April 18, 1846.

#### ARBITRATOR'S CERTIFICATE.—TIME FOR SIGNING JUDGMENT.

*Where a verdict is taken at nisi prius subject to the certificate of an arbitrator, such certificate when given relates back to the time when the verdict was pronounced: therefore where such certificate is given in vacation after more than four days from the return day of the distringas, the successful party is entitled to sign judgment immediately.*

THIS cause having come on for trial at the Summer Assizes, 1845, a verdict was taken for the plaintiff, subject to the award or certificate of a barrister, to be made or given before the fourth day of the next Michaelmas Term, with power for the arbitrator to enlarge the time. The time was enlarged accordingly, and on the 20th of March, some months after the return day of the *distringas juratores*, the arbitrator gave a certificate directing the verdict to stand for the plaintiff for a less amount than that taken at *nisi prius*. Upon production of the certificate, the associate delivered the *postea* to the plaintiff's attorney, who signed final judgment on the 7th of April. A rule was obtained to set aside the judgment for irregularity, on the ground that the plaintiff was not entitled to sign final judgment, until after the expiration of the first four days of the term after the delivery of the certificate.

Martin and Willis showed cause. Final judgment may be signed at any time after four days from the return day of the *distringas*. Reg. Gen. H. T. 2 Will. 4, 67. *Ames v. Lettice*, 6 M. & W. 216. *Mason v. Clarke*, 1 Dowl. P. C. 288. The question, therefore, is whether the fact of the verdict being entered in pursuance of an arbitrator's certificate makes any difference in the practice. It is submitted that it does not, and that the

amended verdict may be entered on the record as if it had been pronounced by the jury. At *nisi prius* it is the constant practice to order speedy execution, although the defendant is entitled until next term to set aside the verdict. In *Little v. Newton*, 1 Man. & G. 976, a cause and all matters in difference were referred by articles of agreement, and the award directed the costs of the cause and the award to be paid by the defendant, and the Court of Common Pleas held that the plaintiff was entitled to have those costs taxed without waiting until the expiration of the time for moving to set aside the award. A case of *Hobdell v. Miller*, 2 Scott, N. R. 163, in which the court expressed a different opinion, must be considered as overruled.

Atherton, *amicus curiæ*, mentioned a case in which Parke, B., had decided at chambers that the right to move to set aside an award did not prevent the successful party from taxing his costs in the meantime.

Jervis in support of the rule. The arbitrator having had power to enlarge the time for making his award, the verdict cannot be considered as given until it is entered on the record in pursuance of his certificate. Suppose the assizes continued until after the commencement of term, could judgment be signed forthwith? The return of the *distringas* does not affect the question, for a cause may be tried after the return day of the *distringas*. *Cheetnam v. Sturtevant*, 12 M. & W. 515. An award may be objected to at any time before the end of the term next after publication.

Pollock, C. B. The rule must be discharged. The question is whether the verdict is to be considered as delivered when the jury in fact pronounce it, or not until it is entered up in pursuance of the arbitrator's certificate. If we examine it by every test, it will be clear that the verdict exists from the time it is pronounced by the jury. It is true that it is delivered subject to alteration, but the alteration when made relates back to the time of the delivery. If it were not so, the plaintiff might in the meantime elect to be non-suited, and so prevent the arbitrator from giving his certificate. In point of form, the verdict is given at the trial, and I do not see why we should hold that it is otherwise in reality. Persons who enter into these engagements must be understood to do so with reference to a reasonable construction of them, and there is always a judge sitting who can prevent any injury being done. I think that the certificate was a mere completion of what was done at *nisi prius*.

Rolfe, B.—If the arbitrator had been of opinion that the amount for which the verdict was taken at *Nisi Prius* was the correct one, the verdict would have stood as pronounced by the jury. If, as suggested, there is some hardship in depriving the defendant of his four days to move to set aside the certificate, the answer is, that the parties have agreed that the arbitrator should certify within a given time, and not at a particular moment.

Platt, B. concurred.  
Rule discharged.

# The Legal Observer.

SATURDAY, SEPTEMBER 26, 1846.

—“Quod magis ad nos  
Pertinet, et necesse malum est, agitamus.”

HORAT.

## THE JUDGESHIPS OF THE SMALL DEBT COURTS.

THE profession is naturally much interested in the powers conferred by the Small Debts Act regarding the qualification of the Judges who are to preside in the new courts. They will consist, it seems, of “as many as shall be needed,” and, if we analyze the act aright, the several persons capable of being selected, may be classed in the following order:—

1st. The present judges of certain courts named in the act, not dependent on the Lord Chancellor for the exercise of his discretion, but possessing a right to continue in their several offices; viz.—the judges at present acting in the courts of Bath, Liverpool, Manchester, Sheffield, Ecclesall, and Middlesex.

2nd. The persons “properly qualified according to the provisions of the act,”<sup>a</sup> to be appointed to the courts named in schedule (C.) by the lords of the manors and hundreds of Ashton-under-Lyne, Birmingham, Cirencester, Kidderminster, Stourbridge, Watford, Sheffield, and Stockport. Why these two classes of personages are favoured above the rest of the existing judges, we are not enabled to state. There are, doubtless, “good causes and considerations” for the exceptions.

3rd. Such of the present judges, assessors, or clerks of the existing County Courts and Courts of Request as the Lord Chancellor may be pleased to elect, being barristers of seven years’ standing, or who shall have practised as barristers and special pleaders for at least seven years, or being attorneys at law, or persons filling

the office of judge of the County Court, or being county clerks at the passing of the act.<sup>b</sup> These judges of the existing courts enumerated in schedules (A.) and (B.) are thus made *eligible* for election, but it is entirely in the discretion of the Lord Chancellor whether any of them shall be elected. It appears, however, to have been contemplated by the legislature, that so many of such judges as may be needed should be chosen, if the Lord Chancellor deem them *competent*.

4th. If there should not be a sufficient number of the present judges or clerks whom the Chancellor may in his discretion deem fit to be the *immediate* judges of the new courts, then his lordship is authorised to appoint barristers of seven years’ standing, or who shall have practised as barristers and special pleaders for seven years. From this class the attorneys appear to be excluded altogether.

5th. *Future* vacancies are also to be filled by barristers of like standing, or by persons who shall have been county clerks of the same counties at the passing of the act.

6th. Several eminent solicitors were appointed to the office of judge or assessor of the enlarged local courts under the Small Debts Act of 1845, and although such courts were not actually holden, these persons evidently come within the provisions of the 9th section of the new act, as being nominated or appointed to preside in or hold such courts, and are eligible for election amongst the new judges, according to the Lord Chancellor’s discretion.

<sup>a</sup> County clerks have usually practised as attorneys, but if there should be any exceptions we presume the Lord Chancellor will not select such persons.

<sup>a</sup> There will be some serious questions on this part of the act.

The result of these powers of election by the Lord Chancellor seems to be, that in order to save the expense of compensating the existing judges, his lordship may choose such of them as he deems eligible, although they are attorneys; but that in future he can only appoint barristers. The scheme, however, of saving compensations is not well carried out, because the future selection is limited to the clerk of the county where the vacancy occurs, and does not extend either to other county clerks or to the clerks of the one hundred and six courts mentioned in schedules (A.) and (B.) Assuming, therefore, that the number of new courts will be limited to sixty-five, as stated in parliament by the Solicitor-General, the amount of compensation will be enormous.

The exclusion of attorneys from the future judgeships, was defended by the Lord Chancellor, (as we understood,) on the ground of the *increased difficulty* of the legal questions which might be involved in the cases to be brought before the new courts when compared with the jurisdiction previously intended to be conferred. We think there must be some mistake in the report of the debate on this subject, for the truth is, that the jurisdiction given by the statutes of 1844 and 1845 was more comprehensive than that of the present act. Thus several of the more difficult classes of cases are excluded from the jurisdiction of the new courts, and causes above 5*l.* may be removed by judges' orders to a superior court. By the 7 & 8 Vict. c. 96, s. 72, it is recited, that—

There are divers Courts of Requests and other inferior courts for the recovery of small debts not presided over by a barrister or an attorney at law as judge or assessor: And it is enacted, That it shall be lawful for the commissioners of any such court, if they shall think fit, with the approval of one of her Majesty's principal Secretaries of State, to appoint any person, being a barrister who shall have practised as a barrister for at least seven years then past, or an attorney at law of one of the superior courts of common law at Westminster, or of the Court of Common Pleas at Lancaster, who shall have practised as an attorney for at least ten years, to be the assessor of such court, and to direct what fees shall be paid to such assessor by the suitors of such court.

It was also by the 59th section provided,—

That if at any time it should appear to the judge who should try the cause, being either a judge of one of the superior courts,

or a barrister, or attorney at law, that the defendant, in incurring the debt or liability which was the subject of demand, had obtained credit from the plaintiff under false pretences, or with a fraudulent intent, or had wilfully contracted such debt or liability without having at the same time a reasonable assurance of being able to pay or discharge the same, or should have made or caused to be made any gift, delivery, or transfer of any personal property, or should have removed or concealed the same with an intent to defraud his creditors or any of them, it should be lawful for such judge, if he should think fit, to order that such defendant be taken and detained in execution upon such judgment, in like manner and for such time as he might have been if this act had not been passed, or for any time not exceeding six calendar months, &c.

Then the 8 & 9 Vict. c. 127, s. 9, in extending the jurisdiction and enlarging the districts of Courts of Request, and inferior Courts of Record, expressly provided, that such courts shall have a barrister or special pleader, or an attorney of one of the superior courts as judge thereof.

From these enactments it appears, that the judges of the enlarged local courts under the acts of 1844 and 1845, would have had to adjudicate on cases of difficulty which have usually come before Commissioners of Bankrupts, and in other cases of equal importance to any which can be expected to arise under the present act.

It is somewhat singular that in case of illness, (which may last a considerable period,) the local judge is authorised to appoint either a barrister or an attorney as his deputy; but when he is absent not from illness or other unavoidable cause, (which is limited to two months in the year,) he can then only appoint a barrister as his deputy.

Whilst the judges, if barristers, may practise anywhere except in their own district, they are required, if attorneys, to cease practising altogether by themselves or partners in any court, either under the act or in any other court of law or equity.

We stated in our last number (p. 475, *ante*) the views of the Common Law Commissioners regarding the defects of inferior courts in general, and in the present number (at p. 506, *post*) we have cited their remarks on the County Courts in particular. The history and progress of the legislative efforts to afford cheap and speedy law at every man's door, is not a little curious.

Our ancestors had no less than five kinds of inferior courts to resort to, namely,—

1. The County Courts.
2. The Hundred or Wapentake Courts.
3. The Courts Baron.
4. Peculiar local courts of limited jurisdiction, which exist by prescription or grant, such as the Palace Court.
5. The courts of particular boroughs.

Most of these courts fell into disuse, and then by many modern acts of parliament a multitude of Courts of Request or conscience were established.\*

The Common Law Commissioners describe the superior courts as,—

Inadequate to the effectual administration of justice, when the cause of action was not considerable: 1st, on account of the *delay*; 2ndly, the *expense* of the suit as compared with the subject matter in dispute; and 3rdly, the practice of the superior courts to *refuse new trials* where the case of action was less than 20*l*.

Soon after this report, the legislature passed the Law Amendment Act, 3 & 4 W. 4, c. 42, under which the expense and delay of trials under 20*l*. was largely diminished, by authorising writs of trial before the under-sheriffs, and a reduced scale of costs was settled. These important alterations were made in substitution of the modern local court scheme, and with a view to keep the law and practice under the supervision of the superior courts. All the three objections were as effectually met as the interests of justice would allow. "Delay" was diminished to the smallest practicable extent, and "expense" to the smallest practicable amount. The refusal of new trials under 20*l*. ceased; and such was the satisfaction given by the under-sheriffs, before whom the writs of trial were executed, that, as shown by a parliamentary return at the instance of the present Attorney-General, (then Mr. *Jervis*.) the application for new trials before the under-sheriffs were fewer than at the assizes before the judges of the superior courts.

Now, after all these changes under the Law Amendment Act and many other recent acts, and after the large reduction of costs, (to which the practitioners readily submitted,) we must say that the present measure, and the prejudicial circumstances which accompany it, constitute a very ungracious act towards the profession, and if it be not very largely amended,—particularly in the constitution and exclusive jurisdiction

of the courts,—the mode of preparing for and conducting trials,—and the right of appearing by attorney,—the administration of justice will be grievously prejudiced, and the convenience and interests of suitors shamefully sacrificed. In fact, like the measure for abolishing arrest, its promoters must retrace their steps and be better advised.

## PARTY TO PAY LEGACY DUTY UPON A COMPROMISE.

THE large amount of money paid in respect of legacy duty, and the peculiar circumstances under which such payments are often made, render it particularly desirable that the heads of the department entrusted with the management of this branch of the revenue, should exercise the discretion with which they are invested by law, with as much liberality to individuals as is consistent with a sense of their public duty. That the proceedings of the commissioners of stamps are generally characterised by this spirit, may be assumed from the infrequency of appeals to the superior courts against their decisions, and the paucity of the occasions on which those appeals have been successful.

The singularity of the facts in the case to which we are about to call attention,\* and which has only recently been reported, may have reasonably justified the doubts which the commissioners appear to have entertained in the matter.

The circumstances of the case were as follow:—A person named Stacey died, leaving personal property to the amount of about 13,000*l*., which he bequeathed by an instrument purporting to be a will, to three persons who were strangers in blood, and whom he appointed executors. The executors proved the will, and in due time carried in their residuary account, showing a nett balance of 12,748*l*., upon which they paid 10 per cent., or 1,274*l*., to the commissioners of stamps and taxes. Subsequently, the soundness of the testator's mind at the time he executed the will was impugned by a verdict in an action of ejectment, and his next of kin cited the executors in the Prerogative Court, to show cause, why the probate should not be revoked, and administration granted to

\* It will be material to inquire whether there are not some Courts of Request or Conscience not included in schedules (A.) and (B.)

\* *The Queen v. the Commissioners of Stamps*, 6 Q. B. 657.



the next of kin. Shortly after the commencement of these proceedings, the executors entered into an agreement with the next of kin, that the probate should be revoked, and administration granted to the next of kin, the executors paying her 6,100*l.*, and assigning to her all the money paid by them on account of legacy or probate duty, and she in consideration releasing them from all claims in respect of the residuary estate which had come into their hands. The probate was revoked, and the next of kin appointed administratrix, who by reason of her consanguinity would be called upon to pay a less sum than 10 per cent. for legacy duty. Upon this state of facts, the executors applied to the commissioners for a return of the 1,274*l.* paid by them, but the commissioners refused to return more than 610*l.*, being ten per cent. on the 6,100*l.* paid to the next of kin.

The question turned chiefly upon the construction to be put on the 37th section of the stat. 36 Geo. 3, c. 52, which enacts, that if any person shall have administered the estate of a deceased person under an authority which turns out to be void, and shall have paid any duty not allowed out of the estate by reason that the same was not really payable, the money paid for such duty shall, upon proof to the satisfaction of the commissioners, be repaid to the person who had paid the same. The 23rd section provides for the case of a legacy released for consideration, or compounded for for less than the amount or value thereof, and provides, that in such case the duty shall be paid according to the amount of the consideration for release, or composition for the same; and the 34th section enacts, that if after payment of any legacy or residue of personal estate, the person by whom such legacy or residue hath been received or retained, shall, for any just cause, be obliged to refund the same or any part thereof, the commissioners are required, on proof of the sum refunded, and that by reason thereof there hath been an over payment of duty, to settle the amount of over payment and repay the same.

The question under these provisions was, whether the commissioners were bound to take the whole duty from the administratrix, or were entitled to retain the duty paid by the persons who had proved as executors in regard to that portion of the estate which they had not paid over to the administratrix. The commissioners

were willing to treat the transaction between the alleged executors and the administratrix as a release or composition under section 23, or a refunding under section 34, but they contended, that section 37, first above cited, was inapplicable; for that although by arrangement between the parties the probate was revoked, it did not follow that the will was invalid, or the authority under which the money was paid to the commissioners avoided; and it was suggested in support of this view, that legatees who were strangers in blood might always defraud the revenue by allowing the next of kin to set aside the will upon terms and take out administration, and then insisting that the whole duty was to be charged only as against the party taking out administration. On the other hand it was admitted, that if the arrangement entered into by the party was fraudulent or collusive, the claim now made could not be supported, but the facts negatived such a supposition. The next of kin, rather than incur the risk and expense of litigation, gave up a portion of the intestate's property. It was the price paid for a compromise, but the parties who received it could not be liable as for a legacy, and the authority under which they paid it was avoided by the revocation of the probate and the grant of administration to the next of kin. The administratrix was now bound to pay the duty on all the nett estate, including the sum she allowed the executors to retain, and if the commissioners also retained the sum paid by the executors, they would have received double legacy duty. They were bound, therefore, it was submitted, to return to the executors the balance due from them, on account of the difference of duties.

The Court of Queen's Bench was of opinion, that the argument in favour of the claimants was well founded, and that the case fell within the 37th sect., the authority under which the executors acted having been revoked. After this intimation of opinion from the bench, the difference of duties was satisfied, and it was not deemed necessary to make the rule absolute.

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#### MEMOIR OF SIR CHARLES WETHERELL.

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SIR CHARLES WETHERELL was born at Oxford, in 1770. He was the third son of

Doctor Nathan Wetherell, Dean of Hereford, and for more than half a century Master of University College, Oxford, a man who died worth 100,000*l.*, accumulated during his tenure of office, from which circumstance the natural inference is that he lived upon the permanent revenue derived from his savings, rather than upon the life-income which his collegiate position yielded. This turn of mind was inherited by his distinguished son, whose character, like that of his father, presents the rare union of a learned and a worldly spirit—a love of money and a love of books. It does not often happen that the sons of men engaged in the business of education attain eminence either in literature or the liberal professions, and still more unusual is it to find persons of good fortune pursuing the legal profession with assiduity and success; yet the subject of this notice inherited much property, and was the son of a tutor. Without entering into the details of his school education, his precocious talents, or his juvenile wit, it may be shortly stated, that from his earliest years he was destined for a learned profession; and the result seems to have fully justified the resolution taken on this subject by his father, who was a man of great penetration, of very estimable character, and who had the good fortune to reckon the celebrated Samuel Johnson amongst the number of his friends, of whose appearance and manners it is said Sir Charles retained a lively recollection. Dr. Wetherell selected Magdalen College as that most worthy to educate the “hope of his family,” and thither the subject of this notice went before he reached the age of seventeen. At that college he prosecuted his studies with much ardour, and with no small *éclat*, taking the degree of B. A. in 1790, and in due course that of M. A.

On the 15th of April, 1790, being then in the 21st year of his age, he was admitted a student of the Inner Temple, and was by that society called to the bar on the 4th of July, 1794. At the outset of his professional career he presented himself for practice at the common-law bar. He was not ignorant of that branch of the profession called “pleading;” on the contrary, he is understood to have conquered its principal difficulties. Fifty years ago there were very few members of the “utter bar” better versed than he was in the doctrines of our unwritten laws; he was not deficient in eloquence or energy,

and as a dialectician he had few rivals; but practical lawyers well knew that he had no chance of being popular at *nisi prius*. His estimate of individual character might be sound, but it was by no means rapid, he would therefore have become acquainted with his jury and his witnesses when it was too late. His strong passions and ardent imagination led him greatly to exaggerate his client's claims, and to overlook the weaknesses and imperfections of his case. Then his discretion was not unimpeachable, his eloquence often prolix, his style “a leash of languages;” his reasoning, though vigorous and sometimes profound, was too scholastic and metaphysical to suit the twelve good men who usually occupy a jury-box.

But John Lord Eldon thought never the worse of an advocate for being over learned or uselessly elaborate. He wished well to the son of his old friend, the Master of University, of which college he and his brother had been fellows; he relished the ancient traditional jokes of his *alma mater*, reproduced in the quaint and fanciful guise with which Mr. Wetherell invested them. No refinement of ingenuity was in those days unsuited to the Court of Chancery, no variety of human learning beyond its range, no amount of human oratory could exhaust the patience or disturb the temper of that tribunal. It was in the year 1801 that Lord Eldon first received the great seal, and in a very short time afterwards Mr. Wetherell applied himself with vast energy and proportionate success to the study of that branch of the legal profession which is known by “the courtesy title” of equity.

Fortunate was it for him that he gradually became a stranger in the courts of King's Bench and Common Pleas; the solicitors in Chancery knew that he had the ear of the court, and his business continued to improve steadily, until in 1816 he was appointed a King's Counsel, with a patent of precedence. But he had then been at the bar two-and-twenty years; and he thought himself much better entitled to be one of the law officers of the crown than either Sir Samuel Shepherd or Sir William Garrow, who at that time respectively held the offices of Attorney and Solicitor-General.

Although he received every possible encouragement from Lord Eldon in the Court of Chancery, yet as regarded the matter of legal patronage he seemed always to consider himself grievously neg-

lected, and apparently in a fit of desperation he resolved to seize one great occasion of proving to the profession and to the world, that his intellectual stature towered far above that of him who held the position of chief advocate to the king.

In the year 1817, Watson, Preston, Thistlewood, and others, were indicted for the Spa-fields riots, which took place in the latter end of the preceding year. Mr. Wetherell undertook the defence of Watson; Mr. Sergeant Copley, now Lord Lyndhurst, appeared for Thistlewood; and Mr. Holt, afterwards Vice-Chancellor of the Duchy of Lancaster, for two of the other prisoners. In the defence of these men Mr. Wetherell was, therefore, the leading counsel; and very elaborate excuses have been put forth to palliate the apparent inconsistency of a strong Tory becoming the advocate of radicals; that he, the Lord Chancellor's friend, should assail the government, seemed to some men an offence that required an ample apology. But the public in those days ought to have known that every Englishman has an indefeasible right to the services of any practising barrister; at the same time it must be admitted that Mr. Wetherell was no reluctant advocate. This short excursion of his into a court of criminal jurisdiction was perfectly voluntary, and in taking that step he seems to have been influenced by mixed motives. He regarded with feelings of generous indignation the system of *espionnage* by which that memorable prosecution was supported. He resolved to eclipse the crown lawyers, to baffle the Home Secretary, to resist the Chief Justice, and to rebuke the Prime Minister, who occupied a seat on the bench throughout the whole trial. These objects he accomplished; but he did not succeed in then acquiring the confidence of the administration, and he was still obliged to pursue the routine of his professional labours without being able to alarm or to conciliate the government of the day. The Inn of Court, however, to which he belonged had previously conferred on him the only dignity it possessed the power of bestowing, that of a bencher, to which rank he was raised on the 16th of June, 1816, and he filled the office of Treasurer to the Inner Temple, in the year 1825. It was in vain, however, that the government continued to withhold its patronage from such a man as Mr. Wetherell; his professional fame was not dependent on court favour. In suits af-

fecting corporation rights; in weighty causes which demanded varied knowledge, black-letter reading, or much grasp of intellect, he was most frequently retained; and not only the Court of Chancery, but the business of parliamentary committees, the privy council, and the House of Lords, bore ample testimony to the qualifications which gave him an elevated rank in the profession of the law.

Still he was unpromoted, and even unplaced. He might be, and eventually he became, Recorder of Bristol; but what of that? He wanted to be the King's Attorney-General, and finally the Keeper of his Majesty's Conscience; yet he was six-and-twenty years at the bar before he adopted the usual method of accomplishing those objects. For the first time he obtained in 1820 a seat in the House of Commons as member for the city of Oxford, his colleague being Mr. Lockhart; but he never became any very great favourite with the "collective wisdom of the nation;" the Liberals sneered at his extreme Toryism, neither was his political creed very palatable to his own party, whose doctrines of government were gradually giving way under the enlarged views and bold leadership of Mr. Canning. Mr. Wetherell was, therefore, treated by both sides of the house as a whimsical pedant rather than a formidable debater; his slovenly attire, uncouth gestures, patchwork phraseology, fanciful illustrations, odd theories, recondite allusions, and old fashioned jokes, tempted men to call him a buffoon when they ought to have admired his ingenuity, revered his learning, and honoured his consistency. During the first parliament of the reign of George IV., namely, from 1820 to 1826, Sir Charles Wetherell represented the city of Oxford; subsequently he sat for Boroughbridge, which was disfranchised by the Reform Act. Upon the consummation of that great event he ceased to be a legislator. Boroughbridge is a small town in Yorkshire, which contained about 70 or 80 voters, the majority of whom were under the influence of the Duke of Newcastle. The natural and just ambition entertained by the subject of this memoir to become a law-officer of the crown was gratified on the 31st of January, 1824, when he received the appointment of Solicitor-General, together with the honour of knighthood. In less than three years from that time, Sir John Copley, who had been Attorney-General, became Master of

the Rolls, and Sir Charles Wetherell succeeded him as first law-officer of the crown. This event took place in the month of September, 1826, but on that occasion his continuance in the office of Attorney-General did not last longer than till the 30th of April in the following year, when he was succeeded by Sir James Scarlett, afterwards Lord Abinger. It was at this time that Lord Liverpool ceased to be Prime Minister, and that Mr. Canning ruled in his stead. When that celebrated man was authorized by George IV. to form a ministry, a very large majority of those who had served under Lord Liverpool threw up office, and amongst that number was Sir Charles Wetherell. Even if these resignations had been limited to Lord Eldon, nothing is more probable than that Sir Charles would have followed the example of the Lord Chancellor, intense devotion to all existing institutions being the leading principle of their political creed: and the minds of both being filled with the strongest apprehension that Mr. Canning intended to introduce the measure called "Catholic Emancipation," they would most probably have acted in concert, even though unsupported by the example of such men as the Duke of Wellington and Sir Robert Peel. It is well known that perfect identity of sentiment and feeling prevailed between Lord Eldon and Sir Charles Wetherell, not only on political and constitutional questions, but upon the administration of justice in the courts of equity. In those days there was a Whig member of parliament, Mr. Michael Angelo Taylor, whose "mission" was of a two-fold character, one portion of which consisted in giving unrivalled dinners to politicians of the Whig school, the other in preferring as many accusations against the Lord Chancellor as Mr. Hume did against the Chancellor of the Exchequer. In these attacks upon Lord Eldon Mr. Taylor was cordially supported by Mr. Brougham and by Mr. John Williams, both of whom then held seats in the House of Commons. Opposed to that triumvirate Sir Charles Wetherell wished to stand alone. He thought his cause so righteous and his advocacy so powerful, that he desired no aid. Many writers have held that the British constitution is "the perfection of human wisdom;" and Sir Charles seemed to think that the Court of Chancery was the best part of that constitution. If any one attempted to reply to the members who complained

of the mal-administration of justice in the courts of equity, Sir C. Wetherell seemed to resent that interference as a sort of trespass upon his own peculiar manor. In the House of Commons he toiled at the task of replying to every one of the above-named gentlemen as if he felt himself in the position of leading counsel for the Lord Chancellor, as well as for the several subordinates of his court. He was at all times and upon every subject a vehement speaker, but upon such questions as the constitution of our equity courts, the claims of the Roman Catholics, reform in parliament, in the church, in universities, or in municipal corporations, he took leave of the usual proprieties of public discussion and ranted like a field preacher. He was an active opponent of University College, in Gower Street, and was no friend to the establishment of any University in London; amongst other grounds, upon this, that such an institution might advance the Scottish system of education in this country, to which his antipathy was excessive.

It was not until Sir Charles Wetherell had reached the age of 56, and ascended to the highest station at the bar, that he contracted matrimony. On the 28th of December, 1826, at Studley Priory, Oxfordshire, he espoused his cousin Jane Sarah Elizabeth, who was the second daughter of Sir Alexander Croke,<sup>a</sup> but her ladyship died without surviving issue on the 21st of April, 1831. Sir Charles then remained a widower for seven years; and at length, in old age—when he wanted only one year of being "three score and ten"—he went, on the 27th of November, 1838, to St. George's, Hanover Square, and there married Harriet Elizabeth, the second daughter of the late Colonel Warneford, of Warneford Place, in Wiltshire. Of that marriage there was no issue; and the second Lady Wetherell survives her husband.

Having thus disposed of these two brief episodes in the life of Sir Charles Wetherell, we may now resume the narrative of his political and professional career. His refusal to serve under Mr. Canning was an extraordinary sacrifice to the

<sup>a</sup> The history of the Crokes is curious. The Blounts were a very ancient family; in the time of the York and Lancaster wars, one branch of them was obnoxious and took the name of Croke. The celebrated reporter was of that family. Sir A. Croke immortalized the family by writing their history in 2 vols. 4to.

claims of party; for had he not declared war against the new government, he would have been Vice-Chancellor of England. Lord Lyndhurst had just resigned the rolls for the woolsack; Sir John Leach succeeded Lord Lyndhurst; and Sir Launcelot Shadwell received an appointment which would have been conferred upon the subject of this notice if his political consistency had been somewhat less rigid. A few months, however, sufficed to bring the Tories again into power, under the Duke of Wellington; and Sir Charles Wetherell, for the second time, became Attorney-General. His return to office has been imputed to the direct interference of Lord Eldon, but that statement rests upon no sufficient grounds. Such an appointment certainly had the effect of mitigating the apparent neglect with which the ex-Chancellor was treated by the duke and his cabinet; but apart from any remnant of influence then possessed by Lord Eldon, Sir Charles had strong claims of his own; and he had powerful allies in his old colleague Lord Lyndhurst, and in his fast friend the Duke of Cumberland, afterwards King of Hanover, who once drank his health as the future Lord Chancellor of England; but in that anticipation the royal duke showed more of personal friendship than of political foresight. The second Attorney-Generalship of Sir Charles Wetherell commenced in the month of January, 1828, and ended, after a duration of fifteen months, in May, 1829. At that juncture the Duke of Wellington, then at the head of the government, prevailed on his parliamentary adherents and his royal master to concur with him in thinking that the penal laws which affected the Roman Catholics must be repealed; Sir Charles Wetherell, however, was an exception to the general rule—he was immovable; he would have nothing to do with “the scarlet individual whose seat is on the seven hills;” and having declined to assist in preparing the Roman Catholic Relief Bill, he gave in his resignation, and never again held any ministerial office.

But he had long held a judicial office, to which he had been elected by a municipal corporation—that of Recorder of Bristol. His able, strenuous, and persevering opposition to the ministry of Lord Grey, and especially to the great measure of parliamentary reform, rendered him exceedingly unpopular. When the period approached for holding the October sessions of 1831,

in Bristol, it was intimated to Sir Charles that if he then visited that city in the usual manner, his presence might be the signal for a very strong expression of popular feeling, if not for actual disturbance and riot. Unwilling to shrink from the discharge of a public duty, but careful at the same time not to take any step likely to interrupt the peace of a community with which he was so closely connected, he consulted Lord Melbourne, then Home-Secretary. With the full sanction of that minister, and after much deliberation, he resolved to proceed to Bristol, and the sessions were opened with the usual procession and other formalities according to immemorial usage. When Sir Charles entered the city his carriage was surrounded by an infuriated multitude. He, and the other corporate authorities, were hooted, were pelted with stones; and it was with the utmost difficulty that they were protected from the murderous rage of their assailants, who pursued them first to the court, in which the sessions were to be opened, and subsequently to the Mansion House. In the course of the following day and night riots ensued, of a character unparalleled since those of which Lord George Gordon was the leader. Without renewing any controversy respecting the conduct of the mayor, or that of the military force, it may be shortly stated that Sir Charles with some hazard and difficulty escaped from those self-styled patriots, who thought it their duty to slay their recorder because he happened to be a Tory. The defence of Sir Charles Wetherell before parliament and the nation was, that his conduct not only accorded with ancient usage, but that it had previously received the sanction of the executive government. Although the course which he took with reference to the Reform Bill exposed him to the effects of extreme unpopularity, yet every one admired the learning, talent, enthusiasm, and even the good-humour and drollery, with which he took his part in the debates of that period. Most of our readers will probably remember that in the year 1648 Colonel Pride was sent with a strong detachment to the House of Commons, when he seized 41 members on their way to the house, and 160 just at the entrance; thus the body which then represented the people was for the time cleared of the party favourable to monarchy; and this mode of dealing with a refractory parliament received the name of “Pride’s purge.”

Amongst the various sallies of Sir Charles Wetherell which excited the risibility of a most adverse audience, was his saying, in the course of a very amusing speech, that the Whig recipe for purifying the House of Commons ought to be called "Russell's purge." In those days, it was quite true that the collective wisdom of the nation often laughed with Sir Charles, but they sometimes laughed at him; his manner was odd and whimsical, and his "words of learned length and thundering sound" conveyed sentiments which the young reformers of that age were disposed to regard as antiquated and absurd; to the latest moment, however, his indomitable zeal knew no abatement. Even at the close of the final observations which he addressed to the old parliament, his inexhaustible humour did not desert him, and he sat down exclaiming, "This is the last dying speech and confession of the member for Boroughbridge." He lived to witness four general elections, but no consideration could induce him to enter a reformed House of Commons.

After his retirement from the House of Commons, he continued for some time to devote himself assiduously to the practice of his profession; latterly, however, he is understood to have reserved himself for important cases. His latest important public appearances were, in the privy council, as counsel against the grant to the London University; opposing at the bar of the Lords, the Irish Municipal Corporation Bill, and as counsel for the King of Hanover, in the case of the crown jewels. Into all of these cases he entered *con amore*. The first and second were sacred to his Tory predilections; in the third he was acting for an old client, whose principles he sympathised with, and whose person he liked; and moreover, his natural honesty was indignant at the shabby attempt to withhold from the King of Hanover jewels which are an heirloom of the crown, claimed to be held by him in trust for the state.

Sir Charles was accidentally overthrown in a carriage whilst returning from the railway near Maidstone, and sustained an injury on the brain which terminated fatally on Monday the 17th of August, in the 76th year of his age.

Searches for a will were made without success at the residences of the deceased, in Berkeley Square, Stone Buildings, Lincoln's Inn, and Old House, Sussex. The personal funded property is estimated at

upwards of 200,000*l.*, principally vested in foreign stock, and there being no surviving children, one-half of the amount will be Lady Wetherell's share. The remainder will be equally divided amongst the brothers and sisters of the deceased. The landed and other property is valuable, and goes to the heir-at-law. For many years Sir Charles took a warm interest in agricultural matters, but on the passing of the Corn Law Repeal Bill he expressed considerable fear as to its probable effects on the landed interest, and determined upon selling the farms which he possessed; but his fears after a short time subsided, and he resolved not only on maintaining them, but on purchasing others, and it was while in the act of carrying out such intention that he met with the accident which in such a short time afterwards terminated so fatally.

[We are principally indebted for this memoir to *The Times*, and have made a few additions (besides our own) from the *Morning Post* and *Daily News*.]

#### NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

##### POOR REMOVAL AMENDMENT ACT, 9 & 10 VICT. c. 66.

An Act to amend the Laws relating to the Removal of the Poor. [26th Aug. 1846.]

1. *No person to be removed from any parish in which he or she shall have resided for five years.—Time during which persons are serving in the army or navy, &c., not to be computed as time of residence.*—Whereas it is expedient that the laws relating to the removal of the poor should be amended: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act, no person shall be removed, nor shall any warrant be granted for the removal of any person, from any parish in which such person shall have resided for five years next before the application for the warrant: Provided always, that the time during which such person shall be a prisoner in a prison, or shall be serving her Majesty as a soldier, marine, or sailor, or reside as an in-pensioner in Greenwich or Chelsea Hospitals, or shall be confined in a lunatic asylum, or house duly licensed or hospital registered for the reception of lunatics, or as a patient in a hospital, or during which any such person shall receive relief from any parish, or shall be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a *bond fide* charitable gift, shall for all purposes be excluded in the computation of time herein-before

mentioned, and that the removal of a pauper lunatic to a lunatic asylum, under the provisions of any act relating to the maintenance and care of pauper lunatics, shall not be deemed a removal within the meaning of this act: Provided always, that whenever any person shall have a wife or children having no other settlement than his or her own such wife and children shall be removeable whenever he or she is removeable, and shall not be removeable when he or she is not removeable.

2. *No widow liable to be removed for twelve months after death of husband.*—And be it enacted, That no woman residing in any parish with her husband at the time of his death shall be removed, nor shall any warrant be granted for her removal from such parish, for twelve calendar months next after his death, if she so long continue a widow.

3. *No child under sixteen years of age liable to be removed.*—And be it enacted, That no child under the age of sixteen years, whether legitimate or illegitimate, residing in any parish with his or her father or mother, stepfather or stepmother, or reputed father, shall be removed, nor shall any warrant be granted for the removal of such child, from such parish, in any case where such father, mother, stepfather, stepmother, or reputed father may not lawfully be removed from such parish.

4. *Sick persons not liable to be removed except under certain circumstances.*—And be it enacted, That no warrant shall be granted for the removal of any person becoming chargeable in respect of relief made necessary by sickness or accident, unless the justices granting the warrant shall state in such warrant that they are satisfied that the sickness or accident will produce permanent disability.

5. *Settlement not to be gained by not being removed.*—Provided always, and be it enacted, That no person hereby exempted from liability to be removed shall by reason of such exemption acquire any settlement in any parish.

6. *Penalty on persons unlawfully procuring removals of poor persons.*—And be it enacted, That if any officer of any parish or union do, contrary to law, with intent to cause any poor person to become chargeable to any parish to which such person was not then chargeable, convey any poor person out of the parish for which such officer acts, or cause or procure any poor person to be so conveyed, or give directly or indirectly any money, relief, or assistance, or afford or procure to be afforded any facility for such conveyance, or make any offer or promise or use any threat to induce any poor person to depart from such parish, and if, in consequence of such conveyance or departure, any poor person become chargeable to any parish to which he was not then chargeable, such officer, on conviction thereof before any two justices, shall forfeit and pay for every such offence any sum not exceeding 5*l.* nor less than 40*s.*

7. *Delivery of paupers under orders of removal.*—And be it enacted, That the delivery of any pauper under any warrant of removal di-

rected to the overseers of any parish at the workhouse of such parish, or of any union to which such parish belongs to any officer of such workhouse, shall be deemed the delivery of such pauper to the overseers of such parish.

8. *The 4 & 5 W. 4, c. 76, and this act to be construed as one.*—And be it enacted, That an act passed in the fifth year of the reign of King William the Fourth, for the amendment and better administration of the laws relating to the poor in England and Wales, and all acts to amend and extend the same, and the present act, except so far as the provisions of any former act are altered, amended, or repealed by any subsequent act, shall be construed as one act; and all penalties and forfeitures imposed under this act shall be recoverable as penalties and forfeitures under the said act for the amendment of the laws relating to the poor.

9. *Act limited to England.*—And be it enacted, That this act shall extend only to England.

10. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

## THE COMMON LAW COMMISSIONERS ON COUNTY COURTS.

It is fit that our readers, who are generally interested in everything concerning the Small Debt Courts, should have before them the Remarks of the Common Law Commissioners on the condition of the old County Courts, which are now to be superseded under the new act.

The commissioners state in their Report that—

“The County Court, once an efficient and important court for the administration of justice, has fallen into a state of comparative inutility.

“As early at least as the reign of King Edward the First, its general jurisdiction was confined to causes of action below 40*s.*; a limitation which, combined with the changes and deterioration which have taken place in the value of money, has reduced one of the most ancient courts to a state of desuetude. It possesses, indeed, a more extensive jurisdiction in replevin suits and in suits commenced by the special writ of *justicies*, but the ordinary practice of removing replevin suits into the superior courts, and the power which, with some exceptions, a defendant possesses of removing a suit from the County Court without giving security even where the suit is commenced by *justicies*, have rendered this additional jurisdiction, (with the exception to which we shall presently advert,) little more than nominal.

“The jurisdiction which was formerly exercised in the trying of real actions in suits removed from the Court Baron, although not

taken away by any statute, may be considered as obsolete.

"The limitation of jurisdiction in point of amount, the annual change of the officers who preside in these courts, the want of competent juries, the lengthened pleadings, heavy costs, unnecessary delay, and a vicious system of practice, attended with enormous abuse and oppression committed by bailiffs in the execution of process by improper agents, render the courts inefficient for the administration of justice, and the subject of general complaint.

"Another inconvenience in the present constitution of this court consists in the distance to which parties and witnesses are frequently obliged to travel where the county is large and the court is held at one place for the whole county. In order to illustrate the mischiefs arising from this defect, we cannot do better than refer to an instance stated by Mr. Gell, clerk of the peace for the county of Sussex, of a person residing at a distance of 50 miles from Chichester, (the place of holding the County Court,) who, being summoned to that place for an unjust debt of 5s., paid the debt and costs, rather than incur the trouble and expense of resisting the action. He further states, that the inhabitants of the populous town of Brighthelmston are often summoned to Chichester, a distance of forty miles, instead of to Lewes, which is only eight.

"Many of those gentlemen who fill the office of under-sheriff are undoubtedly competent, in point of legal knowledge and experience, to preside in the sheriffs' court, but each of them usually remains in office but for a short space, and during that period his attention must necessarily be engaged by many other important official avocations.

"It appears to us that the appointment of a person who should permanently discharge these judicial duties would be a very important and beneficial change.

"The evidence shows that many local courts possessing jurisdiction to an unlimited amount have fallen into utter decay in consequence of the want of competent judges. It appears, on the other hand, that where persons of competent skill have presided as judges, the jurisdiction has been highly beneficial to the public.

"It is also a subject of complaint, that suits in the County Courts are attended with unnecessary delay and expense. In some counties the average length of time which intervenes between the first process and final judgment is about five months, and the average expense of recovering a debt to the amount of 40s. is 6l. on each side, and the costs of a trial by justices amount to 7l. or 8l. on each side, exclusive of the costs of witnesses.

date the 22nd day of February, in the eighth year of your Majesty's reign, in presenting our second report to your Majesty, humbly beg to observe, that by the original commission issued by his late Majesty, certain commissioners therein named were required 'to digest into one statute all the statutes and enactments touching crimes, and the trial and punishment thereof; and also to digest into one other statute all the provisions of the common or unwritten law touching the same, and to inquire and report how far it may be expedient to combine both these statutes into one body of the criminal law, repealing all other statutory provisions; or how far it may be expedient to pass into a law the first-mentioned only of the said statutes, and generally to inquire and report how far it may be expedient to consolidate the other branches of the existing statute law, or any of them.' The former commission having expired upon the demise of the crown, your Majesty was graciously pleased to issue a new commission in the same terms as that issued by his late Majesty.

"Under these two commissions the commissioners, having considered the matters referred to them, gave their opinion in favour of the utility of framing a digest of the criminal law, and stated various arguments in support of their views on the subject. They also presented a complete digest of the criminal law. In framing this digest the commissioners, in several instances, judged it expedient not to present the existing provisions of the law, but certain modifications thereof, of which they deemed the advantage to be manifest. And they, moreover, suggested various other modifications of the existing law, which they thought were proper to be made, but which they did not think fit to introduce into their digest, on account of the limited nature of their authority.

"Your present commissioners have proceeded to execute the enlarged powers of the present commission, by which they are directed not simply to digest the law in its present state, but also, in consolidating its provisions, to put into a form suitable for being passed by the legislature such modifications of the actual law as they judge expedient to submit for the adoption of parliament.

"They entirely agree with the commissioners acting under the preceding commissions in their opinion regarding the importance of framing a digest of the criminal law. The propriety of rendering that law more accessible to the community, they think, cannot admit of doubt. An ascertained text will also afford more easy means of future alteration, whereby the inconveniences of the law may be rectified; and it may be adapted to meet new circumstances and exigences, without impairing the uniformity of the system. As to which point it is observable, that a great number of the definitions and punishments of offences has been enacted in statutes passed at different periods, without due regard to the general principles of the law, or the consistency of particular provi-

## SECOND REPORT OF THE COMMISSIONERS FOR REVISING AND CONSOLIDATING THE CRIMINAL LAW.

"We, your Majesty's commissioners, appointed by your Majesty's commission bearing



sions. It is conceived, also, that judicial magistrates will be greatly assisted by having an authentic and systematic text of the law to which they can refer, though in the application of it to particular cases, considerable scope must always remain for the exercise of judgment and explanatory exposition, (as is now the case,) by those intrusted with its administration. With respect to the mode in which future additions to and alterations of the law may be made, your commissioners concur in opinion with the preceding commissioners, that it would be desirable that such alterations and additions should be notified to the public by means of the 'Gazette,' or some other official document, and that at the end of some fixed period, *e.g.*, three years, they should, by the authority of parliament, be embodied in the digest. On this subject, however, and that, generally, of the utility of a digest of the criminal law, your commissioners beg to refer more particularly to the reports of the preceding commissioners.

"Your commissioners concur in general with the modifications of the existing law adopted or suggested by the preceding commissioners; they think also that some further modifications are essential, in order to render the criminal law of the country suitable to the present state of society, and conformable to enlightened principles of jurisprudence. A simple digest of the actual law, without any modification, would, they apprehend, exhibit many imperfections, which, it cannot be doubted, it must be thought highly expedient to remove.

"Without adverting to all the defects in various branches of the existing law, or anticipating at length what will be more particularly considered in the course of this report, it must surely be deemed expedient to modify several of the present provisions of the law concerning accessories after the fact,—the justifications and extenuations of homicide,—the protection of officers of law whilst engaged in the execution of warrants or other legal process,—marital coercion,—the punishment of accidental injuries without reference to intention or the probable consequences of actions,—that relic of barbarism, the law of mayhem,—besides several other existing provisions, of which modifications are submitted in the present report.

"On some matters, though we do not feel entire confidence in our recommendations, we conceive that advantage may arise from submitting enactments founded on our opinions, the rejection of which, if unapproved of, will not be attended with any material delay or inconvenience; and the task of reducing into a statutory form the will of the legislature, when it is ascertained, as regards any alterations, cannot occupy considerable time. Of matters of this latter description, the new provisions submitted by your commissioners on the law regarding duels are offered with great hesitation, not so much on account of doubts entertained by the commissioners, as because it is a

subject deeply affecting the interests of society, and upon which public opinion is much divided.

"As the modifications of the existing law proposed by the former and your present commissioners occasionally affect principles of the deepest importance and most extensive influence, their consideration has necessarily occasioned much research and consultation, and has consumed much longer time than if the labours of your commissioners had been confined simply to forming a digest of statutes, the principles laid down in text writers of authority, and the decisions applicable to the subjects treated of in the present report.

"In their present report, your commissioners humbly submit to your Majesty the draft of a bill, framed in a shape to be passed by the legislature, for the purpose of consolidating all the provisions of law as modified by your commissioners regarding the general matters treated of in the preliminary chapter of the schedule to that bill, and the definitions and punishments of the offence of homicide and other offences against the person. To particular articles of the schedule notes are appended, indicating where the existing law has been modified, and the nature of the particular modification; and the bill and schedule, without notes, are again given in the Appendix. Where the subjects to which the articles relate have been discussed by the previous commissioners, references have been given to the reports in which those discussions are contained; and where it has been thought necessary, the sentiments of the present commissioners, in reference to the proposed modifications, have been expressed.

"Although your commissioners have lost no time in submitting this portion of their labours to your Majesty, and have, in pursuance of the authority under which they act, framed the draft of the bill now submitted to your Majesty, they submit that it will not be expedient to pass such bill into a law before the whole digest is completed. For it is obvious that, in order to secure entire uniformity of principle and arrangement, it is very expedient that the commissioners should have examined the whole subject, as well the part relating to procedure as that regarding the substantive law. Much of useful generalization may thus also be effected, tending materially to render the digest more accessible and intelligible. It can scarcely fail to happen, that any one chapter of the digest may be rendered more precise and unobjectionable in every respect after the commissioners shall have diligently scrutinized and reduced into proper articles all the other chapters; and until the views of the commissioners, with reference to the mutual dependency of the several chapters and their general arrangement, shall be fully developed by the completion of the work, it is very probable that erroneous judgments may be formed of the practical operation and sufficiency of detached parts.

## "DRAFT OF A BILL,

## "INTITULLED

"*An Act for Consolidating and Amending so much of the Criminal Law as relates to Incapacity to commit Crimes, Duress, the essentials of a Criminal Injury, Criminal Agency and Participation, and Homicide and other Offences against the person.*"

"Be it enacted, &c.

"1. That the schedule to this act annexed shall be deemed and taken to be parcel of this act, and that the four chapters of the same, and the ten sections of the said chapters, and the 146 articles of the said sections, and the headings thereof and the numbers thereof, respectively, shall be deemed and taken to be enacted by this present act, as if each and every of the said chapters, sections, articles, headings, and numbers had been expressly and in terms herein recited, with the usual words and in the usual forms of enactment, or declaration, or proviso, as the case may be; and that from the passing of this act every one guilty of any offence described in, or defined by, the said schedule, shall be liable to such punishment as is therein appointed in respect of such offence.

"2. That after the passing of this act, the rule of law whereby a married woman charged with the commission of any crime is, in case her husband be present at the time, presumed to have acted under his coercion, unless it appear that she did not so act; and all rules of law contrary to the provisions of chapter 1 of the said schedule shall be, and the same are hereby repealed and annulled."

"3. That no person shall, after the passing of this act, be liable to prosecution by any indictment or information in respect of any offence against the person not included in the said schedule.

"4. Provided that nothing hereinbefore contained shall exempt any person from prosecution by indictment or information in respect of any offence against the person not included in the said schedule in any case where, by any act or acts or parliament, persons committing such offence are made specially punishable on account of the party against whom or the place wherein such offence is committed."

"\* Upon the subject of marital coercion, see the note to article 9 of section 1, of chapter 1. of the schedule.

"<sup>b</sup> The necessity for this provision as an exception to section 3, is occasioned by the limited nature of the digest now submitted to your Majesty, should it be proposed to pass it into a law before the completion of the whole digest of crimes and punishments. No such clause would be necessary if the whole digest were completed. The following are examples of the offences to which the above provision is intended to apply, viz.: treason in shooting at the queen, the offence of striking a judge whilst in the execution of his office, &c., &c."

"5. Provided also that nothing herein contained shall exempt any offender from any proceeding in respect of any offence against the person in which any magistrate or commissioner is or shall be empowered to exercise any summary jurisdiction without trial by jury.

"6. Provided also, that as regards any offence against the person perpetrated before the day of \_\_\_\_\_, 1846, and also as regards any offence against the person in part perpetrated by any act done before that day, and which offence shall be completed or consummated on or after that day, the offender shall be punishable as if this act had not been passed.

"7. That after the passing of this act every offence in respect of which it is declared by the said schedule that the offender shall incur the penalties of the 6th or any higher class, shall be tried in the same manner and be subject to all the same rules of procedure as if such offence were by the said schedule declared to be felony; and every offence in respect of which it is declared by the said schedule that the offender shall incur the penalties of any lower class, shall be tried in the same manner and be subject to all the same rules of procedure as if such last-mentioned offence were by the said schedule declared to be a misdemeanor."

## SELECTIONS FROM CORRESPONDENCE.

## ENFRANCHISEMENT OF COPYHOLDS.

I REJOICE to see that the Copyhold Commissioners in their recent report recommend the *compulsory abolition of heriots*, and I trust the next session of parliament will not pass without a legislative enactment on the subject.

Such a measure will be one step more in the right direction towards the entire abolition of copyhold or customary tenure in the kingdom.

It is manifest that its continuance is a bar to improvement, for who will build on copyhold land to be subject to pay fines on the rack rent of the houses built thereon?

SENECHAL.

## SCHOOLMASTERS' LOSSES.

According to the French code of laws, if the parent of a child neglect to pay the schoolmaster for his education, the child, in consideration of the benefit he has received, is bound within a limited period after attaining his majority, to pay for his education.

Might not such a principle be advantageously

"<sup>c</sup> The object of the above clause is to make the system of procedure at present applicable to felonies and misdemeanors, applicable to the offences contained in the schedule, according to the provisions of the above clause, until your commissioners shall have considered the whole subject of the degrees of crimes and trial of offenders."

adopted in England? The loss annually sustained by the masters of academies by the bankruptcy or insolvency of the parents is very considerable.

A.

## SLIPS OF LAND ON ROADSIDE.

In reply to "R. H. R.," page 448, *Legal Observer*, vol. 32, I would mention that the right in the adjoining landowner to the narrow slips of land lying between inclosed grounds and a public road accrue by virtue of the common law of presumption, and not under the statute law. The leading case, it is apprehended, is *Doe dem. Pring and Roberts v. Pearsey*, 7 Barn. & Cross. 304, and Lord Tenterden, in *Steele v. Prickett*, 2 Starkie, 463, explains the reasons which support the law in *Doe d. Pearsey*.

J. P.

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

## Railway Cases.

[BEFORE resuming the regular series of points decided in the Common Law Courts, it may be convenient to select the decisions relating to Railways, which interest a large class of readers.

The cases in the common law courts on the construction of statutes will follow next.]

## ACTION, NOTICE OF.

See *Notice of Action*.

## AWARD.

See *Bridge*, 2.

## BRIDGE.

1. *Ferry*.—*Injunction*.—*Issue on interlocutory application*.—*A.*, being seised of a ferry over the river Bure, obtained an act of parliament enabling him to substitute a bridge for the ferry, and enacting that any persons who should evade the tolls by conveying passengers, &c., over the river otherwise than by the bridge, should subject themselves to a penalty of 40s. for every such offence, to be recovered in a summary way before a justice of the peace, and levied by distress, and in case of insufficient distress, a power was given of committing the offender; any party aggrieved might appeal to the quarter sessions, but it was enacted, that no order or proceedings under the act should be removed by *certiorari*, or any other suit or process to any court of record at Westminster. The Yarmouth and Norwich Railway Company purchased of the owner of the ferry a piece of land for a terminus, within the undoubted limits of the ferry, and a clause was inserted in their act, that they would not erect a bridge over the river Bure, without the consent of the plaintiff or owner for the time being of the

bridge; and that nothing therein contained should prejudice or affect the right or title of the plaintiff to the bridge or ferry, or the tolls payable in respect thereof. The railway company, upon the opening of their line, dug a canal to the river, and, by means of a steam boat, conveyed their passengers, &c., from their terminus to a part of Yarmouth much below the site of *A.*'s bridge.

On a motion for an injunction to restrain the railway company—*Held*, that, where the injury is small, and the means of approximating very nearly to the amount of the probable damage are given, and where there is no reasonable ground for apprehending an infringement of right by others, the court will not prejudice the legal question by granting an injunction, but will put the parties on certain terms until the decision of the legal right.

That where the court is not clearly satisfied with respect to the legal right, it will be guided by the balance of inconvenience.

That irreparable mischief or extreme damage, which cannot afterwards be compensated, or the impossibility of ascertaining the proximate amount of damage, will afford sufficient reasons for the interference of the court.

That where the whole question is fully before the court by affidavits, so that the points in dispute are sufficiently and distinctly raised, the court will direct an issue upon an interlocutory application.

That where the only remedy given by an act is by recovering penalties *de die in diem*, in a summary way, the court has the power of protecting, by injunction, the right of the person in whose favour such remedy is given. *Cory v. Yarmouth and Norwich Railway Company*, 3 Car. & Ol. 524, (per V. C. *Wigram*.)

Cases cited in the judgment: *Bacon v. Jones*, 4 Myl. & Cr. 433; *Hussey v. Field*, 2 C., M., & R. 432; 5 Tyrw. 855; *Harmer v. Paine*, 14 Ves. 130.

2. *Award*.—*Easement for temporary purposes*.—The plaintiffs being obliged, in order to carry out the purposes of their act, to cross the defendants' railway, and having, under their original act, only a power to cross with the consent of the defendants, applied to parliament for another act to enable them to build a bridge over the defendants' railway without such consent. The second act gave the plaintiffs power to build such a bridge, provided that the width between the abutments thereof should not be less than 26 feet, measuring the same in a line at right angles to the defendants' railway, and that no part of the under side of the soffit of the bridge should come within 16 feet of the surface of defendants' railway; and provided that such bridge should be constructed of such materials and in such manner as should be agreed upon between the plaintiffs' engineer and the engineer of the defendants' railway; and in case the defendants' engineer should not, within three weeks after the plaintiffs' engineer should have submitted to him a plan of the proposed bridge, signify

his assent thereto, then it should be referred to the surveyor of bridges for the county, whose decision should be binding and conclusive on all parties.

The defendants' engineer not having given his assent to the plan submitted by the plaintiffs' engineer within three weeks, the plaintiffs submitted their plan to the county surveyor, who made his award, with a plan, from which it appeared that the abutments of the proposed bridge must necessarily rest on the defendants' land on each side of their rails.

The defendants prevented the plaintiffs from building their bridge according to this plan, whereupon they purchased land upon which to build the abutments, and submitted a new plan to the defendants' engineer. No notice having been taken of this new plan the plaintiffs referred it to the county surveyor, and a day was fixed for proceeding on the reference. The defendants did not attend the reference, but built up walls which rendered it impossible for the plaintiffs to erect their bridge; whereupon they filed a bill, praying an injunction which would in effect be mandatory, and compel the defendants to pull down their walls, and withdraw all obstructions to the plaintiffs proceeding in their works.

On a case sent for their opinion, the Court of Exchequer decided as follows:—

1. That the plaintiffs had no right, without the consent of the defendants, to construct the bridge according to the first award of the county surveyor. 2. That, as he had no power to direct a bridge to be built upon land without the consent of the owner, his first award was not binding, and he was at liberty to make another. 3. That the abandonment by the plaintiffs of the first award did not operate as a release of their right to build a bridge over the railway. 4. That they had a right to place temporary scaffolding, &c., on the land of the defendants, if necessary for the construction of the bridge.

A court of law having decided the legal right in favour of the plaintiffs, the Vice-Chancellor accordingly granted the injunction sought by the bill, with a proviso, that it should be exercised *bonâ fide*, and so as not at any time or in any manner to obstruct or interfere with the traffic of the railway. *The Great North of England, Clarence and Hartlepool Junction Railway Company v. Clarence Railway Company*, 3 Car. & Ol. 605.

#### CALLS.

1. *Notice of calls.—Promise to pay.—Joint clerks.—Qualification of trustees.*—By an act, (11 Geo. 4, and 1 W. 4, c. lxi, ss. 1, 2, 3,) certain trustees were created for the purpose of building a bridge.

Section 5 qualified and disqualified certain persons for trustees, and imposed a penalty on persons elected or appointed trustees acting as such without being qualified, or without taking the oath prescribed by section 6, but provided that all acts of persons acting as trustees, though not duly qualified or disqualified, pre-

vious to their being convicted of the offence, should be valid.

Section 6 gave the form of the oath, and enacted, that no person should be capable of acting as a trustee, (except in administering the oath,) until he should have taken and subscribed it, which oath it should be lawful for any one of the said trustees to administer, and which, so taken and subscribed by each trustee, was to be entered in the book of their proceedings.

Section 11 directed the trustees to keep a book, and to make proper entries therein of the names of the trustees who should attend the meetings, and of all orders and proceedings relative to the execution of the act; and that the chairman of every meeting should subscribe his name at the end of the proceedings of the said trustees at such meeting, and that such book should be admitted in evidence.

Section 85 provided, that persons who should agree to give or lend any money towards carrying the act into execution should pay the same to the treasurer of the said trustees, as the trustees should order and direct; and that if any person should neglect or refuse to pay, the trustees might sue for and recover the same in the name of their treasurer by action of debt or on the case.

Section 109 enacted, that in all cases where it might be necessary for the trustees to give any notice under the act, such notice should be in writing or print, and be signed by them or some of the trustees, or by the clerk or clerks for the time being to the said trustees by their order.

In an action against a defendant, who had agreed to lend the trustees 25*l.*, for nonpayment of calls—*Held*,

1. That an agreement to lend the 25*l.* might be inferred from a paper signed by the defendant, which referred to an engagement to subscribe a certain sum therein set against his name, coupled with proof of payment by him of an earlier call corresponding to that on 25*l.*, and of his taking a receipt for a call on a loan of that sum; and that such agreement was not within section 4 of the Statute of Frauds, (29 Car. 2, c. 4,) though a prospectus had previously issued stating that the whole sum would not be (nor was it) called for within a year.

2. That the action on an agreement to give or lend might be brought either in debt or case.

3. That notice of a call, though not expressly required by the statute, was necessary.

4. That it was sufficient to allege in the declaration that the calls were made by order of the trustees, and that defendant had the notice of the calls, to wit, by notice in writing signed by the clerks to the trustees, and (at all events after verdict) without stating that the notice was given by order of the trustees.

5. That an order by the trustees to pay the call into a certain bank to the account of the treasurer to the trustees was sufficient.

6. That a notice in the names of the clerks, pre-

but signed only by a clerk in their employment, was insufficient, and when proved to have been the only one given to the defendant, was not cured by his subsequent promise to pay; but where not proved to have been the only one given, a good notice might be inferred from the fact of such promise to pay.

7. *Semble*, That signature by one of two joint clerks in the name of both would be sufficient.

8. That the acts of trustees who had not duly taken the oath were invalid.

9. But that it was sufficient evidence of their having been sworn, that in the first page of the book of proceedings, the signatures of the trustees were subscribed to the form of the oath (which had been copied there with blanks for the names,) and that in the proceedings of the meetings entries were made that the trustees whose names were subscribed to the oath were sworn at such meetings.

10. That the entries in the book, which were made up by the clerks after the meeting, and signed by the chairman of the meeting subsequently, were good evidence; but that, as the statute did not make the book the only evidence, the absence of an entry might be cured by evidence of the express promise to pay. *Miles v. Bough*, 3 Car. & Ol. 668, (Q. B.)

Cases cited in the judgment: Southampton Dock Company v. Richards, 2 Car. & Ol. 215; 1 M. & G. 448; Regina v. Mayor of Evesham, 8 A. & E. 266.

2. *Subscribers and proprietors.—Signature of book.—Stamp of parliamentary deed.*—By a railway act, (6 W. 4, c. lxxix.) it is provided, (sect. 129,) that all persons who have subscribed, or who shall hereafter subscribe to the undertaking, shall pay such sums as shall from time to time be called for, and that in case of default, it shall be lawful for the company to sue for and to recover the same. Section 130 empowers the directors to make calls from the subscribers to and proprietors of the undertaking for the time being, and if any owner or proprietor shall neglect to pay his rateable proportion, it shall be lawful for the company to sue for and to recover the same. Section 125 provides that the company shall from time to time enter in a book the names, &c., of the several persons who shall be or become entitled to shares in the undertaking, and shall deliver a certificate thereof to every such proprietor on demand, which shall be evidence of his title to the shares.

A defendant had subscribed the parliamentary contract, but was not registered in the book as a proprietor: *Held*, that the words "subscriber" and "proprietor" are synonymous in the act, and therefore, that the defendant was liable as a subscriber in an action brought against him under section 129, for calls made on the proprietors of the undertaking.

Section 118 enacts, that the proceedings of the meetings shall be entered in a book, and shall be signed by the chairman of such respec-

tive meetings, and shall be allowed to be read in evidence in all courts, &c.: *Held*, that the signature of the minutes of a previous meeting by the chairman at the subsequent one, in the following form:—"Confirmed, W. G.," W. G. having been chairman of the previous meeting, was a sufficient compliance with the act.

*Semble*, that the signature of the parliamentary deed by each subscriber does not require a separate stamp. *West of London Railway Company v. Bernard*, 3 Car. & Ol. 649, (Q. B.)

Cases cited in the judgment: London Grand Junction Railway Company v. Freeman, 2 Car. & Ol. 468; 2 M. & G. 606; Southampton Dock Company v. Richards, 2 Car. & Ol. 215; 1 M. & G. 448; Miles v. Bough, 3 Car. & Ol. 668; 3 Q. B. R. 845.

3. *Transfer of shares.*—By a railway act, (6 & 7 W. 4, c. xxxvii, s. 95,) the company are empowered to sue subscribers for calls, and the directors are authorized from time to time to make calls of money from the subscribers to, and proprietors of, the undertaking for the time being; and "if any owner or proprietor for the time being of any such share shall neglect or refuse to pay such his rateable proportion, together with interest, if any, it shall be lawful for the company to recover the same by action of debt, &c., or the directors may declare his shares to be forfeited, and to order them to be sold." And "that, in any action to be brought by the company against any proprietor for the time being of any share, to recover any money due in respect of any call, it shall be sufficient for the company to declare and allege, that the defendant, being a proprietor of a share in the undertaking, is indebted to the company in such sum of money as the calls in arrear amount to, for a call, or so many calls, of such sums of money upon a share belonging to the defendant, whereby an action hath accrued to the company by virtue of this act, without setting forth the special matter; and on the trial of such action it shall only be necessary to prove that the defendant, at the time of making such respective calls, was a proprietor of a share in the undertaking," &c. The act enables proprietors to sell and dispose of their shares, subject to certain rules and conditions, and provides, that "on every sale, the conveyance (being executed by the seller and purchaser) shall be kept by the company, who shall enter in some book a memorial of such transfer and sale, and indorse the entry of such memorial on the deed of sale or transfer; and that, until such memorial has been made and entered, the seller shall remain liable for all future calls, and the purchaser shall have no part or share in the profits of the undertaking, nor any interest in respect of such share paid to him, or any vote in respect thereof as a proprietor; and "that no person or corporation shall sell or transfer any share upon which any call has been made, after the day appointed for payment, unless at the time of such sale or transfer he or they have paid the full sum of money called for in respect of such share."

In an action for a call, the declaration stated that the defendant, before the commencement of the suit, to wit, on the 6th March, 1838, being the proprietor of 50 shares in the undertaking, he was indebted to the company in 250*l.*, for a call of 5*l.* upon each share; whereby, and by reason of the said sum of 250*l.* being and remaining wholly unpaid, the defendant still is indebted to the plaintiffs in the same, and an action hath accrued, &c.

The defendant pleaded, that although, on the 6th of March he was the proprietor of the shares, after the making of the call and before the same was payable, he duly transferred all his shares in the undertaking to one Thompson, that Thompson accepted the transfer, and that the conveyance was delivered to, and entered and memorialised by the company, before the call was payable, whereby the defendant ceased to be the proprietor of the shares, and to be liable to the said call: Held, reversing the judgment of the court of C. P., that the declaration was sufficient upon general demurrer; and that the plea was bad, as an argumentative denial of the debt. *Aylesbury Railway Company v. Mount*, 7 M. & G. 898.

#### CARRIER.

1. *Charge for delivery of goods.*—The original bill was filed in June, 1843, and plaintiffs thereupon gave a notice of motion, supported by affidavits, for an injunction to restrain the defendants from making certain charges as carriers by railway, which the plaintiffs considered to be illegal. On the 1st of July, defendants applied for time to answer the affidavits, and on the 15th their affidavits were filed. On the 6th of September and 23rd of November, plaintiffs filed further affidavits, and on the 19th of December, affidavits were filed by the defendants in reply. On the 29th of January, plaintiffs opened their case, and on the 29th of May, applied for a day to reserve the argument, and the 21st was fixed. A supplemental bill was filed on the 1st of June, and on the 29th the hearing was resumed, and the application was refused by the Vice-Chancellor of England, on the ground of delay, with costs. The Lord Chancellor, on appeal, affirmed the judgment of the Vice-Chancellor, with costs.

When a party files a bill, praying an injunction, and afterwards moves, on affidavit, for an immediate injunction: Held, that that can only be granted on the ground, that to wait for the decree would be productive of great or unknown mischief to the plaintiffs.

Where a plaintiff does not press on his application, the court will draw the conclusion, that it is not of an urgent nature.

Where an option is given to a party sending packages containing small parcels, to pay according to an average, or to pay for the parcels separately, if the principle of an average be legal, and the amount of it reasonable, although the alternative requiring the party to pay for the separate parcels may be *per se* illegal, that will not render the demand to pay according to average illegal; and the court will not grant

an injunction until the illegality be established at law.

Whether defendants, being carriers only to Birmingham, can legally make the same charge to A. for the delivery of goods at Birmingham as they make to B. for delivery of goods at Worcester, B. agreeing to give the company their whole custom, and agreeing to pay on certain articles an increased price.—*Quære?* *Pickford v. Grand Junction Railway Company*, 3 Car. & Ol. 538, (per Lord Chancellor.)

Cases cited in the judgment: *Parker v. Great Western Railway Company*, 3 Car. & Ol. 563; *Semple v. London and Birmingham Railway Company*, 1 Car. & Ol. 120.

2. *Reasonable charges.*—By a railway act, 5 & 6 W. 4, c. cvii., s. 163, it is enacted, that all persons shall have free liberty to pass along and use the railway with carriages upon payment of certain rates and tolls. By s. 166, the company are empowered to provide locomotive and other propelling power, and to charge for the use thereof certain additional rates. Sect. 167, authorises the company to carry and convey on the railway, passengers, cattle, and goods, and to make reasonable charges for such conveyance, in addition to the rates or tolls by the act authorised. Sect. 174, empowers them from time to time to reduce any of the said rates or tolls, and again to raise them, so as not to exceed the amount authorised by the act; and sect. 175 provides, that the aforesaid rates and tolls shall at all times be charged equally and after the same rate per ton per mile throughout the whole of the railway, in respect of the same description of articles, matters, or things; and that no reduction or advance in the said rates or tolls shall, either directly or indirectly, be made partially, or in favour of or against any particular person or company, or be confined to any particular part of the railway, but shall extend to the whole of the railway, and to all persons whomsoever using the same or carrying the same description of articles, &c. thereon. By a subsequent act, 2 Vict. c. xxvii., a similar provision is made for charges by the said acts authorised to be made for the carriage of passengers, goods, &c., to be conveyed by the company, or for power and carriages supplied by them.

The company acted themselves as carriers, charging the public at the rates specified in their printed bills for carriage, including the collection, weighing, loading, unloading, and delivery of the goods. They also carried goods for other carriers, allowing them a certain deduction for the trouble of collecting, &c., which was performed by the carriers. In their dealings with a particular carrier, they refused to make such allowance, but were willing to perform for him all the things which formed the consideration for that allowance, and which, in fact, he performed for himself.

Held, that the company were not justified in withholding the allowance from such carrier, and therefore, that the charges to him were not equal or reasonable.

The company made the following distinction as to charges for carriages, in their dealings with the public and with carriers. In the case of the public, if there were several packages from one consignor to several consignees, or *vice versa*, the charge was made upon the aggregate weight: in the case of carriers, if there were several packages consigned by or to different individuals, the charge was upon the separate weight of each package, unless it was known that more than one package belonged to the same sender, or was going to the same consignee, in which case they were charged on the aggregate weight. In all cases of carriers, the company dealt with and recognised the carrier only as their consignor or consignee of the goods.

*Held*, that they were bound to treat them so for all purposes, including the mode of charging in the aggregate, and had no right to make a distinction in that respect between them and individuals.

*Held*, also, that the extra charges which were paid by the plaintiff in both instances might be recovered back in an action for money had and received, being payments not made voluntarily, but in order to induce the company to do that which they were bound to do without them.

Such acts of parliament are to be construed strictly against the parties obtaining them, and liberally in favour of the public. *Parker v. Great Western Railway Company*, 3 Car. & Ol. 563. (C. P. per Tindal, C. J.)

Cases cited in the judgment: *Pickford v. Grand Junction Railway Company*, 3 Car. & Ol. 193; 10 M. & W. 399; — *v. Piggott*, in *Cartwright v. Rowley*, 2 Esp. 723.

#### FERRY.

See *Bridge*, 1.

#### FOOTPATH.

See *Road*.

#### INJUNCTION.

See *Bridge*, 1.

#### NOTICE OF ACTION.

By the London and Brighton Railway Company's Act, (7 W. 4, and 1 Vict. c. cxix,) the company were empowered to make and maintain a railway: all persons were to have the liberty to use the same, with carriages properly constructed, upon payment of tolls; and the company were empowered to provide locomotive engines and carriages for the conveyance of goods and passengers. It was also enacted, that no action should be brought against any person for anything done or omitted to be done in pursuance of the act, without twenty days' notice. *Held*, that the company were not entitled to notice, where an action was brought against them for negligence in carrying a passenger, as they were sued merely as carriers, and not for anything done or omitted under the act. *Carpue v. London and Brighton Railway Company*, 1 D. & M. 608.

Case cited in the judgment: *Palmer v. Grand Junction Railway Company*, 4 M. & W. 749.

#### NOTICE OF CALLS.

See *Calls*, 1.

#### PURCHASE.

*Title*.—A railway act gave the company power to agree with the owners of land which they were empowered to take for the purposes of the railway, for the absolute purchase of their interest therein; and provided, that if any difference should arise between them as to the value of the lands, or the compensation to be made in respect of them, or by reason of absence the owner should be prevented from treating, or if he should fail to disclose or prove his title to the lands, &c., the amount of compensation should be settled by a jury in the manner mentioned in the act. Another clause provided, that if the owner of any lands, on tender of the purchase money or compensation, should be payable to the satisfaction of the company, or if he should be gone out of the kingdom, or could not be found, or should refuse to convey, it should be lawful for the company to deposit the purchase money or compensation payable in respect of such lands in the Bank of England, in the name of the Accountant-General, and thereupon all the interest in such lands, in respect whereof such purchase money or compensation should have been so deposited, should vest absolutely in the company: *Held*, that this latter clause applied *prospectively* to the period *after* the purchase money was agreed upon, or the amount of compensation was settled by the jury; and therefore that the company could not immediately upon the finding of the jury, pay the amount awarded by them into the Court of Chancery, and take possession of the land, but must first call upon the owner to make out a title to their satisfaction, although *before* the assessment by the jury he had failed to disclose or prove his title. *Doe d. Hutchinson v. Manchester, Bury, and Rossendale Railway*, 14 M. & W. 687.

#### ROAD.

*Convenience of public*.—*Bed of road does not include footpath*.—By a railway act, (6 & 7 W. 4, c. cxl. s. 94,) a company were empowered generally to divert, raise, sink, or deepen any roads, in order to carry the same over, under, or by the side of the railway, subject to the provisions and restrictions of the said act. By another act, (7 W. 4, and 1 Vict. c. cxiv,) enabling them to vary their line, they were authorised (s. 38) to carry the line of railway across a certain turnpike road, by means of a bridge of the width of 30 feet at the least, and for that purpose to lower the then present bed of the road, provided that, in case it should be expedient to lower the surface of the road for the purposes aforesaid, then it should not be lawful for the company to lower or alter the present bed of the road, unless the same should be lowered on both sides of such bridge so as to leave a certain inclination; and that the company should make all new fences, &c., and lay and reform the road.

The company made a bridge 30 feet wide, over a turnpike road 42 feet wide, consisting of 30 feet carriage way and two footways of 6 feet each. They lowered the carriage way of the road, but left the footways at their original level.

On the trial of certain traverses to a return to a mandamus which had issued to the company to reform the road, and to lower it the whole width of 42 feet, the jury found—1. That the company had not so lowered the road. 2. That they had reformed the road in compliance with the act. 3. That the road so made by the company was more commodious to the public than if the whole road had been lowered to the full width of 42 feet.

The Court of Queen's Bench held, that the word "road" meant the whole road, including footpaths; and therefore, that the company had not reformed the road as required by the act; and that the finding of the jury upon the last issue, as to its being more commodious, was not sufficient to dispense with a compliance with the language and meaning of the act.

On judgment that a peremptory mandamus, *non obstante veredicto*, should issue, and the prosecutors recover their costs, *Held*, by the Court of Exchequer Chamber, that it was not a good return to the mandamus, that the carriage road and footpath as they now exist are more commodious and convenient to the public, &c., than if lowered as required by the writ. But *held*, (reversing the judgment of the Court of Queen's Bench,) that, by the words in the 88th section, "bed of the said turnpike road," the act intended that the carriage road only should be lowered; and that the full breadth of the former carriage road was not intended to be preserved under the bridge, but only as to the part of the road lowered as it descends to the bridge on one side and ascends from it on the other. *Manchester and Leeds Railway Company v. The Queen*, 3 Car. & Ol. 633. (Exchequer Chamber.)

STAMP.

See *Calls*, 2.

TITLE.

See *Purchase*.

TOLLS.

**Coals.—Construction of ambiguous enactments.**—In railway acts, any ambiguities in a clause imposing tolls or duties, is to be construed against the company, and in favour of the public.

By a railway act, (1 & 2 G. 4, c. xlv. s. 62,) a company thereby incorporated, (the Stockton and Darlington Railway Company,) were empowered to demand for articles conveyed by their railway—"For all coal, &c., such sum as the company shall appoint, not exceeding 4d. per ton per mile." "For all, &c. articles for which a tonnage is *hereinbefore* directed to be paid, which shall pass the inclined planes upon the said railway, such sum as the company shall appoint, not exceeding 1s. per ton." "And for all coal which shall be shipped in the

port of Stockton-upon-Tees aforesaid, (the only previous mention of the port being in sect. 1, where it is described as the port and town of Stockton upon Tees,) for the purpose of exportation, not exceeding one halfpenny per ton per mile."

Under the authority of a subsequent act, (9 G. 4, c. lxi.) another railway company (the Clarence Railway Company) constructed a railway from a place on the river Tees called Port Clarence, communicating with the Stockton and Darlington Railway, at a place called Sim Pasture.

*Held*, that the coal shipped for London was chargeable only with the duty of one halfpenny per ton per mile, as being coal "shipped for the purpose of exportation."

*Held*, also, that coal shipped for exportation was liable to the inclined plane charge.

*Held*, also, that Port Clarence and Middlesbrough, both ports in the river Tees, and within the legal limits of the port of Stockton-upon-Tees, were for this purpose within the port of Stockton-upon-Tees. *Stockton and Darlington Railway Company v. Barrett*, 7 M. & G. 870.

Cases cited in the judgment: Hull Dock Company v. Browne, 2 B. & Ad. 58; Gildart v. Gladstone, 11 East, 675.

TRANSFER OF SHARES.

See *Calls*, 3.

TRESPASS.

**Crossing railway.—Compensation.**—A railway act (6 & 7 William 4, c. cvi. s. 28), empowers "the owners and occupiers of lands, through or upon which the railway or other works are intended to be made, to agree to accept satisfaction or recompense for the value of such lands, and also compensation for any damage, by them sustained by reason of the severing or dividing of such lands, and for any damage, loss, or inconvenience sustained by them by reason of the taking thereof, &c.; and in case the company and such parties shall not agree as to the amount of compensation, &c., the same shall be ascertained by the verdict of the jury (if required) as thereafter directed." Sect. 29, "for settling all differences between the company and the owners and occupiers of any land taken or damaged, or injuriously affected by the execution of any of the powers granted by the act," provides for the summoning of a jury by the sheriff, to inquire of, assess, and give a verdict for the money to be paid for the purchase of such land, or by way of compensation (*inter alia*) for or by reason of the severing and dividing the same from other lands. Section 31 directs, that such verdicts and the judgments thereon, being first signed by the person presiding, shall be deposited with, and kept by the clerk of the peace for the county, among the records of the quarter sessions, and shall be deemed records to all intents and purposes, and that such records and true copies of them shall be evidence. Sect. 111 enacts, that in every case in which the owners, &c. of any



lands shall, in their arrangements with the company, have agreed to receive compensation for gates, &c., or passages, instead of the same being erected by the company for the purpose of facilitating the passage to and from either side of the lands severed or divided by the said railway, it shall be lawful for such owners, &c., to pass or cross the railway from one part to the other of the lands so severed and divided, otherwise than by a bridge, &c., to be erected at the charge of such owners. Sec. 215 authorises the owners, &c., of lands through which the railway shall be made, (except in cases where the company shall have made proper communication,) to pass and repass directly over the part of the railway made upon their lands, for the purpose of occupying them; which right, by section 217, is to cease as soon as the company shall have constructed proper bridges, &c.

An owner of land severed by the railway claimed compensation from the company; the question was submitted to a jury, who awarded to him compensation, on the footing that there was to be a total separation of his land, without any communication being made, and he received the payment as such compensation: *Held*, that this was an arrangement with the company under sect. 111; and that the owner of the land afterwards crossing the railway for the purpose of the occupation of his land, was a trespasser within the 3 & 4 Vict. c. 97, s. 16; and that, as it was proved that the verdict of the jury had never been recorded under sect. 31, parol evidence of it, and of the grounds on which it proceeded, was admissible. *Manning v. Eastern Counties Railway Company*, 3 Car. & Ol. 637, (Exchequer.)

#### TRUSTEES, QUALIFICATION OF.

See *Calls*, 1.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

#### REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

*Vice-Chancellor Knight Bruce.*

*Richardson v. Moore.* July 23 and 27.

#### SOLICITOR.—TAKING OUT CERTIFICATE.—COSTS.

*Where the solicitor whose name appeared to the bill on behalf of the plaintiff, had not taken out his certificate, the court upon motion to take the bill off the file for irregularity, ordered the name of another solicitor to be substituted, and gave special directions for ensuring accuracy, and bonâ fides ordering the plaintiff, and the party whose name had been used as solicitor to the bill, to pay the costs of the application.*

Mr. Toller moved on behalf of one of the defendants, that the bill might be taken off the file for irregularity, the party, whose name appeared upon the bill as the plaintiff's solicitor, not having taken out his certificate, and in fact,

not being a solicitor of this court. He also asked for the costs of the application.

Mr. C. P. Cooper, on behalf of the plaintiff, asked that permission might be given to substitute the name of a solicitor. The plaintiff was not aware at the time of filing the bill, that the certificate had not been taken out.

Mr. Toller then applied to withdraw the appearance of the defendant, or that he might have an opportunity of demurring.

Mr. C. P. Cooper observed, that the other defendants were not represented on this occasion, and if the bill was taken off the file, they would have no opportunity of obtaining their costs.

*Vice-Chancellor Bruce.* Let the person whose name is to be substituted personally appear, and state his willingness to allow his name to be used for this purpose. Let the registrar satisfy himself that the person so appearing was a solicitor of the court. Let the defendant who moves, have his appearance dated as of this day, and let the plaintiff and the gentleman whose name now appears upon the bill as solicitor, pay the costs of this application.

*July 27.*—It having been mentioned that no solicitor had appeared for the purpose of having his name put upon the bill,

His Honour directed all the proceedings against the defendant to be stayed until further order, and the costs to be paid as before directed.

#### *Vice-Chancellor Wigram.*

*Whitmore v. Ryan.* March 28, 1846.

ORDERS OF MAY 1845.—SERVICE ABROAD.—JURISDICTION.—2 WILL. 4, c. 33, AND 4 & 5 WILL. 4, c. 82.

*A bill was filed by assignees, praying an account of mercantile dealings between the bankrupt and the defendant, who was resident in Dublin. The court, under the 33rd Order of May, 1845, in November of that year, gave leave to serve a subpoena, for the defendant to appear and answer in Dublin; and no appearance having been entered on the 22nd of November following, leave was further given to the plaintiffs to enter an appearance for the defendant. Upon motion to discharge both orders, and to expunge the appearance, upon the ground of want of jurisdiction, the court refused to interfere, it appearing that the defendant had been in England since the filing of the bill, and it held that the orders were perfectly regular.*

Mr. Wood and Mr. Metcalfe, on behalf of the defendant, moved that two orders, dated respectively the 20th November and the 22nd December, 1845, might be discharged, and that the record and writ clerk might be ordered to expunge the appearance which had been entered for the defendant. The plaintiffs were assignees of Dyer, a bankrupt, with whom the defendant had had dealings, the latter having

formerly carried on business at Barcelona, but being now resident in Dublin. The bill, which was filed in November, 1842, prayed an account of dealings between the parties. On the 20th of November, 1845, the plaintiffs obtained leave under Order 33, (Art. 1 & 2), of May, 1845, to serve a subpoena for the defendant to appear to and answer the bill in Dublin, or within 20 miles thereof. By this order, two weeks from the time of such service were given, within which the defendant was to appear. Eight weeks from the time of the said service were given, within which he was to plead, answer, or demur, (not demurring alone,) or to obtain from the court further time. If the defendant demurred alone, he was required to do so within two weeks from such appearance. The defendant not having appeared, the plaintiff, on the 22nd of December, 1845, obtained liberty to enter an appearance for the defendant, the order of this date reciting that of November, the service of the order, the subpoena, and copy of the bill upon the defendant at his office in Dublin.

In support of the motion it was contended, that the court, prior to the Orders of May, 1845, could have no jurisdiction in a suit against a party resident in a foreign jurisdiction. The 3 & 4 Vict. c. 94, under which those orders were made, did not contemplate enlarging the jurisdiction. The statute only related to "alterations" in "the process, pleadings, and course of proceedings" in the "form of writs;" the mode of sealing them, the "form and mode of filing bills, answers," &c., and of obtaining discovery, taking evidence, and of obtaining relief. The court had no practice to alter as to parties, over whom it never possessed any jurisdiction. The 33rd Order empowered the court to give leave to serve defendant out of the jurisdiction in "any" suit. The statutes 2 W. 4, c. 33, and 4 & 5 W. 4, c. 82, only authorise service abroad in suits which relate to land, or government, or public stock, or shares in public companies in this country. In *Buchanan v. Rucker*, (9 East, 192,) a question arose as to the effect of a judgment obtained there against a party absent from the Island of Tobago. Lord Ellenborough said, "By persons 'absent' from the island, must necessarily be understood persons who have been present and within the jurisdiction, so as to have been subject to the process of the court, but it can never be applied to a person who, for aught that appears, never was present within nor subject to the jurisdiction." (*Dillon v. Alvarez*, 4 Ves.; *Douglas v. Forrest*, 4 Bing. 703; *Shaw v. Lindsey*, 18 Ves. 496; *Fernandez v. Corbin*, 2 Sim. 544; *McMaster v. Lomas*, 2 My. & K. 32; *Cameron v. Cameron*, ib. 289.)

Mr. Romilly and Mr. Willcock appeared for the plaintiff.

Sir James Wigram, V.C. I do not intend to express any opinion, whether an act of parliament, in words commensurate with the terms of this order would be proper in an international point of view, nor whether foreign countries might be reasonably expected to treat

such an act as conclusive upon an absent party, who has not appeared to a subpoena served upon him in a foreign country. I shall also abstain from considering whether the framers of the act intended giving to the judges of the Court of Chancery, by whom the Orders of May, 1845, were framed, power to make an order like that in question. The only point which I have left myself at liberty to consider is, whether the 33rd Order does, in fact, give the court power to make the order now sought to have discharged, and if so, whether it has been properly exercised in this case. After hearing the argument of Mr. Wood, I feel no doubt as to the effect of the order. It gives the court a discretionary power in any suit to order the service of a subpoena upon a defendant abroad. It has been admitted necessarily and properly, that the case must be dealt with as though the orders themselves had been embodied in and formed part of the act of parliament; and if that be so, it is impossible to doubt the interpretation of the order. I do not deny that for some purposes, there is great weight in the observation, that the court in this view of the question would, in substance, be empowered to serve a subpoena upon a foreigner who has never been within the jurisdiction, or a subject who has not been within the jurisdiction within two years before the filing of the bill. But my opinion is, that the order does, in its terms, give the court that authority, but in such cases it would exercise a discretion, and then I do not see how it would in any respect violate the rules of natural justice. On the other hand, if the argument were carried to its full extent, I should be compelled to hold, that if a party in England expressed his intention immediately to go to Boulogne or Dover, as otherwise he would be served with a subpoena, and he went there accordingly, the court could not order him to be served there. This order does not give the plaintiff a right to call upon the court in every case absolutely to order service of the subpoena abroad, but merely gives it the power of doing so in the exercise of its discretion, which is governed by the circumstances of each particular case. I can conceive cases in which it would be very proper to serve an Irish gentleman living in Ireland, where there are courts of competent jurisdiction, with a subpoena in the manner pursued here. The material question is, whether the defendant has due notice of the proceedings here, so that he may come and make his defence, and not whether he receives such notice, either at Boulogne or Dover. I therefore wish to hear counsel further, exclusively to this point, namely, whether this was a case in which the discretion of the court has been properly exercised.

The plaintiffs' counsel were then heard upon the question of the propriety of the order, under the circumstances disclosed by the affidavits on both sides, which were somewhat conflicting, but from which it appeared, that the defendant had been in England in September, 1843, and in communication with the assignees and the

bankrupt. It was alleged on the one side, but denied on the other, that he had agreed upon that occasion to accept service at any future time, if it should be determined to prosecute the suit, for the compromise of which there appeared then to have been some negotiation.

Mr. Wood was heard in reply.

Sir James Wigram, V. C. If I had been as well aware at the time I made the order for service as I am now, of all the facts of the case, probably I should not have made the order unless the plaintiffs had explained more distinctly than they have now done, why they did not file their bill in Dublin instead of doing it here. The order, however, is in my opinion regular, and there has been no improper concealment on the part of the plaintiff in obtaining it. The question is, what is to be done in the existing state of things. I give both parties credit for intending to speak the truth. I have no doubt that the plaintiff intended serving the defendant with a subpoena in 1843, before he returned to Ireland, if the suit were not compromised. The defendant might have been alive to that, and yet, without conceiving himself under the obligation of telling them what he was going to do, he might have taken them by surprise by going back to Ireland sooner than they expected. It is clear that an opportunity had offered itself of serving the defendant in this country, of which advantage would have been taken if he had not returned to Ireland sooner than was expected. By allowing the appearance to stand, I do not place the defendant in a worse situation than he would have been in if he had been served upon that, or any other occasion here, at the same time I do not know why the plaintiffs did not file their bill in Ireland. However, what I have to consider is, whether the order having been regularly served, there is any reason for discharging it. There is no ground for believing that the defendant is in a worse situation by the bill having been filed here, than he would have been had it been filed in Ireland. I consider that the 33rd Order does not give the plaintiff a right to call upon the court for an order to serve a subpoena abroad, but merely gives the court the power to make such an order where justice to the plaintiffs requires that it should be made, and where it may be made without injustice to the defendant. After the argument in this case, I shall be extremely circumspect in what cases I make a similar order, but in the present case I shall order the appearance to stand, reserving the costs of the motion, and giving the defendant six weeks' time to answer the bill.

#### Queen's Bench.

(Before the Four Judges.)

*Francourt v. Thorne.* Trinity Term, 1846.

#### PROMISSORY NOTE.—STAMP.

*A promissory note was as follows: "On demand I promise to pay T. H., or order the sum of 500l. for value received, with inter-*

*est at the rate of four per cent., and I have lodged with the said T. H. the counterpart leases signed by, &c., for ground let by me to them respectively, as a collateral security for the same 500l. and interest to Thorne." In an action by an indorsee against the maker of the above instrument, it was proved to have a promissory note stamp.*

*Held, that the instrument was properly stamped, and that the latter part of it did not render an additional stamp necessary.*

THIS was an action of *assumpsit* by the indorsee against the maker of a promissory note, which was in the following form:—"On demand, I promise to pay T. H., or order, the sum of 500l. for value received, with interest at the rate of four per cent., and I have lodged with the said T. H. the counterpart leases signed by, &c., for ground let by me to them respectively, as a collateral security for the same 500l. and interest, to Thorne." The note had a sufficient stamp for a promissory note, but it was contended that inasmuch as it contained an agreement, that it required also an agreement stamp. A verdict was found for the plaintiff, with leave reserved to enter a nonsuit, provided the court should be of opinion that a second stamp was required. A rule nisi to that effect having been obtained,

Mr. Maynard showed cause. The character of this instrument as a promissory note is not affected by the additional matter contained in the latter part of it, which does not qualify the former part, and need not be looked to for the purposes of this action. In *Wise v. Charlton*,<sup>a</sup> the same point came before the court—the instrument was properly stamped for a promissory note, but it also contained a memorandum that the payee had deposited certain title-deeds as a collateral security, and the court said,—“If this be a promissory note, no difficulty remains. It is not less a promissory note from its being also an agreement of another kind.” The same principle is recognised in several other cases. *Oyde v. Cookeney*;<sup>b</sup> *Williams v. Gerry*;<sup>c</sup> *Beeching v. Westbrook*;<sup>d</sup> *Eagleton v. Gutteridge*.<sup>e</sup> Where there are specific agreements on the same paper, but only one is required for the purposes of the action, the document is admissible, provided the agreement sought to be enforced is properly stamped. *Robson v. Hall*;<sup>f</sup> *Reed v. Deere*;<sup>g</sup> *Evans v. Pratt*.<sup>h</sup>

Mr. Butt, *contra*. In the case cited in *Wise v. Charlton*,<sup>i</sup> there were two stamps on the document, and the court only held that it was good as a promissory note. The latter part of this instrument amounts to an agreement, and as such requires an additional stamp, under the statute 55 Geo. 3, c. 184, schedule, part 1.

The indorsee cannot be placed in a better situation than the payee would have been had

<sup>a</sup> 4 Ad. & El. 786. <sup>b</sup> 1 Moo. & Rob. 517.

<sup>c</sup> 10 Mee. & Wel. 296. <sup>d</sup> 8 Mee. & Wel. 411.

<sup>e</sup> 11 Mee. & Wel. 466. <sup>f</sup> 1 Peake, 172.

<sup>g</sup> 7 B. & C. 621. <sup>h</sup> 1 Dowl. N. S. 506.

<sup>i</sup> 4 Ad. & El. 786.

be brought the action. [Lord Denman, C. J. It is, merely said, I have deposited certain leases as a collateral security for the 500*l.*, that is a mere memorandum of an agreement, and according to the case of *Breeching v. Westbrook*,<sup>1</sup> it was held, that for such a memorandum to require a stamp, it should embody the terms of an agreement so as to be binding between the parties.]

*Per curiam*.<sup>2</sup> This rule must be discharged.  
Rule discharged.

#### *Exchequer.*

*James v. Crane.* 30th April, 1846.

#### SPECIAL CASE.—DEATH OF DEFENDANT.

*Where a case was referred ad nisi prius to a barrister to state a special case, and the defendant died before the special case was delivered, the court refused to set it aside.*

THIS cause was referred by order of *nisi prius* to a barrister, who was to state a special case. The arbitrator was attended by the parties, but before he delivered the case the defendant died.

*Chilton* moved to set aside the special case, on the ground that the death of the defendant was a revocation of the arbitrator's authority. He referred to *Watson on Awards*, p. 31, and urged that there was no distinction between an award and a special case.

*Pollock, C. B.* There ought to be no rule. If this had been the case of a special verdict, and the defendant had died before the verdict was finally settled, it is clear that his death would not have prevented the verdict from being drawn up. A special case does not resemble an award, for in the latter the arbitrator has to decide both the law and fact, but in the former the arbitrator is merely placed in the situation of the judge to settle the points of law.

*Parke, B.* I am of the same opinion. It must be presumed that the jury have found the facts stated in the special case. Then the arbitrator is a person appointed in the room of the judge to settle the case. If he had not been substituted the judge might have proceeded to settle the case after the death of either party. There is no ground for the application.

*Alderson and Rolfe, B.'s*, concurred.

Rule refused.

#### *Court of Review.*

*Esparle Reynolds—re Reynolds.* Aug. 3.

#### OFFICE FEES WHEN RETURNED TO THE BANKRUPT.

*Where no assignees have been chosen, and the fiat has been annulled, the court, upon the petition of the bankrupt, will order the office fees to be returned to him.*

A PETITION was presented by the bankrupt, seeking to have the office fees of 20*l.* and 10*l.* returned to him. It was sworn that no assignees had been chosen, and the fiat had been annulled.

*Mr. Southgate* appeared in support of the petition.

The Chief Judge made the order as prayed.

#### *Court of Bankruptcy.*

*M'Nally v. Moore.* 14th Sept.

#### PRACTICE UNDER THE SMALL DEBTS ACT.

*On the service of a summons under the 8 & 9 Vict., c. 127, the original summons signed by the commissioner must be produced.*

THE plaintiff's attorney stated, that with great difficulty the officer of the court had succeeded in serving the defendant personally with a copy of a summons issued by his Honour, under the stat. 8 & 9 Vict. c. 127. The defendant, however, did not appear upon the summons, and the plaintiff was therefore entitled as of course to a warrant for the defendant's commitment to prison, upon an affidavit of service of the summons. It was now intimated by the registrar, that the affidavit of service was insufficient, as it merely stated that the defendant was personally served with a copy of the summons issued by the commissioner, and it did not appear that the defendant had ever seen the summons actually signed by the commissioner.

*Mr. Commissioner Holroyd* thought the practice should be conformable to that in bankruptcy, where when a summons was issued under the hand of a commissioner, a copy was served, and the original at the same time shown to the party summoned. If the officer could swear that the defendant had seen the original under the hand of the commissioner, it would be sufficient, otherwise he should decline to grant a warrant.

The plaintiff's attorney said, that as the officer of the court felt some difficulty in making the affidavit suggested, he must endeavour to serve the defendant with another summons, taking care to show him the original. But another difficulty presented itself: some of the commissioners, he was informed, held, that a summons under the Small Debts Act could only be heard before the commissioner who granted it, and before whom it was returnable. As his Honour was now about to leave town, if a summons was granted by him, and could not be heard by another commissioner, it could not be made returnable before November.

*Mr. Commissioner Holroyd* was not aware that any such rule as that suggested had been laid down by the commissioners. It would lead to great inconvenience if such a rule prevailed, and, as it was desirable there should be uniformity in the practice, it would be a very fit subject for consideration at the next meeting of the commissioners. If any doubt existed on the subject, the safest course was, for the

<sup>2</sup> 8 Mee. & Wel. 411.

<sup>1</sup> *Denman, C. J., Patteson and Williams, J's.*

plaintiff's attorney to take out a summons in the room of Mr. Commissioner *Evans*, who would be in attendance next day, and for the whole of the next month.

The plaintiff's attorney adopted the suggestion of Mr. Commissioner *Holroyd*, and took out a summons on the following day before Mr. Commissioner *Evans*, returnable before that learned commissioner.

#### MASTERS EXTRAORDINARY IN CHANCERY.

*From August 21st, to Sept. 18th, 1846, both inclusive, with dates when gazetted.*

Barstow, Thomas John, Dedham. Aug. 28.  
Burton, William, Manchester. Aug. 28.

#### DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From August 21st, to Sept. 18th, 1846, both inclusive, with dates when gazetted.*

Jennings, Richard, and Edmund Dade Conyers, Great Driffield, Attorneys and Solicitors. Aug. 28.  
Owen, James, and Benjamin Peach, Liverpool, Attorneys and Solicitors. Sept. 15.  
Russell, Robert, and George Mackenzie, 23, Martin's Lane, Cannon Street, Attorneys and Solicitors. Aug. 21.  
Upperton, Robert, Henry Verrall, and Arthur Veysey, Brighton, Attorneys and Solicitors. Sept. 15.

#### LAW PROMOTIONS AND APPOINTMENTS.

THE Queen has been pleased to direct letters patent to be passed under the great seal, granting the dignity of a Knight of the United Kingdom of Great Britain and Ireland, unto David Pollock, Esq., Chief Justice of the Supreme Court of Judicature at Bombay. Sept. 4.

Sir David has departed for India to enter on the duties of his office.

Her Majesty has also granted the dignity of Knight to Alfred Stephen, Esq., Chief Justice of New South Wales. Aug. 21.

#### LEGAL OBITUARY.

Aug. 15.—William Holmes, of Great James Street, Bedford Row, Solicitor, aged 67.

Aug. 25.—Charles Reeves, late of Furnival's Inn, Solicitor, aged 45.

Aug. 31.—William Taylor, of Great Queen Street, Lincoln's Inn Fields, Solicitor.

Sept. 4.—Allen Pering, of Lawrence Pountney Place, Solicitor.

Sept. 4.—James de Saumarez, of the Inner Temple, Barrister-at-Law, aged 40. Called to the bar, Nov. 21, 1828.

Sept. 4.—John Cole, of Odiham, Solicitor, aged 52.

Sept. 14.—The Honourable Mr. Justice Williams. Called to the bar by the Inner Temple, June 15, 1804; appointed King's Counsel, Trinity Term, 1827; Solicitor-General to the Queen, Trinity Vacation, 1830; Attorney-General to the Queen, Michaelmas Term, 1830; Baron of the Court of Exchequer, Feb. 28, 1834; Judge of the Court of King's Bench, Easter Term, 1834. We hope soon to give a memoir of the learned judge.

Sept. 16.—Richard Samuel White, jun., of Lincoln's Inn, Barrister-at-Law, aged 29. Called to the bar, Nov. 21, 1843.

#### THE EDITOR'S LETTER BOX.

WE shall notice such of the editions of the Small Debts Act as are accompanied with useful notes, and add our own views from time to time. The 8th section provides that the orders in council for carrying the act into effect must be published in the London Gazette. See p. 473, *ante*.

The letters of "Scrutator," and "S. H.," are acceptable.

"A Young Articled Clerk" should certainly improve himself in the Latin language. It is equally requisite for his position in society and his professional education. We think the standard of legal learning should be placed considerably higher than it used to be. Lawyers should surely keep pace with their clients. As all the rest of the community are pressing forward in the race of improvement, professional men must, of course, not remain behind.

*Erratum*.—P. 469, line 2, col. 1, for *smaller* read *similar*.

The new bill "to restore arrest on Means Process in Civil Actions under certain Limitations," affords a remarkable illustration of the haste and imperfection of modern legislation.

The Letters of T. G. M., and "Taciturn," shall be attended to.

In answer to "An Attorney and Subscriber," we apprehend that a non-professional ~~man~~ may charge for "drawing or preparing" a will:—Agreements not under Seal, Wills, and Letters of Attorney, are excepted in the prohibition against drawing Conveyances or Deeds in the 44 Geo. 3, c. 98, s. 14.

# The Legal Observer.

SATURDAY, OCTOBER 3, 1846.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

## RIGHT OF PRACTISING AND ALLOWANCE OF COSTS IN THE SMALL DEBT COURTS.

### 1. RIGHT OF PRACTISING.

WHILST this act was in progress through parliament we called attention to the clause, as it at first stood, by which no one could appear as an advocate or an attorney *without leave of the judge*.<sup>a</sup> The clause was subsequently altered, but in a very imperfect manner, and we ventured to point out the imperfection before the act passed. We then asked, and the inquiry may still be made:—At what time is this *leave of the judge* to be obtained? Is it to be granted on the coming on of the trial, or is the party previously to wait on the judge,—state the nature of the case,—(and are both parties to be present,) and then ask for this permission? Or, when or how else is the petition for leave to be heard by counsel or attorney to be preferred? There must surely be some rule laid down. Is it to depend on the amount of the debt, or the supposed difficulties of the case, (but before the facts are stated how can the difficulty be estimated,) or will the ill state of health or inferior mental capacity of either party be the ground of vouchsafing the privilege of an advocate?

Notwithstanding the suggestions for amending this part of the act, the clause passed as follows:—

"That no person shall be entitled to *appear* for any other party to any proceeding in any of the said courts unless he be an attorney of one of her Majesty's Superior Courts of Record, or a *barrister-at-law instructed by such attorney* on behalf of the party, or, *by leave of the judge,*

*any other person* allowed by the judge to appear instead of such party; but no barrister, attorney, or other person except by *leave of the judge*, shall be entitled to be heard to *argue any question as counsel* for any other person in any proceeding in any court holden under this act." (s. 95.)

It is not clear what is intended by the right "*to appear* for any other party to any proceedings in any of the said courts." In one sense it might mean merely the right to enter an appearance to the plaintiff in the manner in which attorneys enter an appearance to a writ of summons in the superior courts; but such limited meaning cannot be the intention of the legislature, because it is provided that not only an attorney of one of the Superior Courts of Record, but a barrister-at-law instructed by such attorney on behalf of the party may "*appear to any proceeding*;" and as a barrister cannot enter an appearance to a writ in the superior courts, he cannot in this sense *appear* to a plaintiff. The appearance, therefore, must be of another kind, and can only apply to an appearance for a party to a proceeding *in open court*.

This view of the subject is further supported by the consideration that when such appearance takes place by a barrister, such barrister must be "*instructed by such attorney on behalf of the party,*" and it would be absurd to suppose that a barrister is to be instructed to do the common technical business of an attorney and not that of an advocate before the court.

It is true that the clause proceeds to provide that no barrister, attorney, or other person shall be heard to *argue any question as counsel*, "*except by leave of the judge.*" So that whilst a party has the right to the assistance both of an attorney and a barrister "*to appear to any*

<sup>a</sup> See pp. 354, 380, 401, *ante*.

proceeding in any one of the said courts," he cannot have a question argued as counsel without the judge's leave! This is surely a very imperfect and mutilated grant of professional aid. We apprehend that much inconvenience and serious difficulty will arise in the administration of justice unless the Rules and Orders to be made by the superior courts shall provide for the cases in which a party, whether plaintiff or defendant, may not only appear in, but argue his case by counsel or attorney. If the practice be not settled either by the rules of the superior judges or the practice of the local courts, the parties will labour under great disadvantage; and in many instances there will be a total denial of justice,—for frequently an action would not be brought or defended unless the party could be heard by his counsel or attorney. The aged, the infirm, and the timid, as well as the busy claimant, will abandon their rights and submit to injustice, if they cannot be heard by their professional agents.

Then the same section provides, that by leave of the judge, "any other person" [than barristers and attorneys] may be allowed by the judge to appear instead of the party. This, in one view, may be a useful power, inasmuch as it will enable the judge in *preliminary* hearings to permit the clerk of an attorney duly authorized to appear; and we trust the permission will not be extended to that class of persons, (too numerous we fear,) who usurp, or are permitted to use (or abuse) the names of attorneys, and are not the *bond fide* clerks of respectable practitioners. The court, we trust, will be warned against such persons; otherwise, we apprehend, a numerous class of unqualified persons will haunt these courts and equally plunder their clients and oppress their opponents.

## 2. ALLOWANCE OF COSTS.

The only two sections in the act relating to the allowance of costs, either between party and party or attorney and client, are the 88th and the 91st. The questions involved in these sections are important, not merely as they relate to the interests of the *practitioner*, but still more materially as they concern the interests of the *public*. The proposers of the act confidently claim the merit of bestowing *cheap* as well as *speedier* justice. It is an act brought forward, not by some popular member of the legislature at the

instance of his ill-informed constituents, but, though introduced nominally by the late Lord President of the Council, it was explained and supported by the Lawyers of the Cabinet. We must hold them, therefore, to their undertaking, and in performing it, neither the public nor the profession will be satisfied by their making the *costs cheap to the defendant, at the expense of the plaintiff*. In estimating that expense they must take into their contemplation various items:—1st. A fair and proper, not a niggardly, allowance to be made to the witnesses whom the plaintiff or his legal advisers may *bond fide* think it requisite to summon in support of his case. If the defendant be successful, he must in like manner be allowed the expense of the evidence he has adduced or deemed necessary to prepare. It would be a monstrous grievance and fallacious economy in conducting these proceedings, if the successful parties were driven to bear any material part of the expense, or if the witnesses themselves were mulcted of their travelling expenses and loss of time. The gross injustice of such a course, falling not on the practitioner, but on the public, would not long be endured.

2nd. Not merely the expenses incurred on the day of trial, but those which may be rendered necessary in making a due and cautious preparation for it, should also be awarded. But here there will be considerable difficulty. Is there to be any allowance for advising on evidence,—making inquiries,—conducting searches, and other investigations for the purpose of being fully prepared for the day of trial, and to avoid being taken by surprise, or incurring a risk of a second trial? Notices to produce documents, books of accounts, papers, &c., will have to be served, sometimes at a considerable distance, and occasionally on the eve of the trial. Are not these and other necessary or precautionary measures to be paid for? Is not the fee of the barrister, the special pleader, or the attorney, in advising on these various steps, to be allowed, with the attendances and correspondence that may be needful in carrying out such reasonable advice?

3rd. Then comes the loss of time of the plaintiff and defendant in preparing for the trial and attending it. They are to be examined either on their own behalves, or either of them at the instance of the other. Their affairs must suffer from their absence, unless they are allowed to employ an attorney to manage their case through-

out. It is not the mere actual disbursement which must be computed in this cheap system of litigation. In this busy country, Time is of great value, and in superseding the old practice of acting by attorney, we must estimate the client's loss and inconvenience of being *his own lawyer*.

The fact was, that in the vast majority of instances the threat of an action in the superior courts produced the money or some satisfactory arrangement, whilst in other cases a writ and the apprehension of further costs led to a settlement. The danger now will be, that if the plaintiff be allowed little more than his money out of pocket, with a small fee for the attorney, almost every debtor will avail himself of the chances of reducing the demand or escaping it altogether.

The 88th section appears to be the only one relating to costs between *party and party*. It authorises the judge to apportion the costs as he may think fit. His duty, therefore, will be, like a judge in a court of equity, to consider all the circumstances, and visit the culpable party with the whole or such part of the costs as may meet the justice of each particular case.

The 91st section is the one which applies in the first instance to costs between *attorney and client*; but in the equitable distribution of the costs between the parties, the judge, if he does his duty, must look at the amount of costs which the client is liable to pay his attorney, and according to the modern principles of taxing costs, must allow to the successful party all the expenses he has *reasonably* incurred. In considering, therefore, the interests of the suitor, we must see what costs are included in both these sections. By the 88th it is enacted,

"That all the costs of any action or proceedings in the court, not herein otherwise provided for, shall be paid by or apportioned between the parties in such manner as the judge shall think fit, and in default of any special direction shall abide the event of the action, and execution may issue for the recovery of any such costs in like manner as for any debt adjudged in the said court."

And by the 91st section it is enacted, that

"No person, not being an attorney admitted to one of her Majesty's Superior Courts of Record, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said court, and no attorney shall be entitled to have or recover therefore any sum of money, unless the debt

or damage claimed shall be more than 40s., or to have or recover more than 10s. for his fees and costs, unless the debt or damage claimed shall be more than 5l., or more than 15s. in any case within the summary jurisdiction given by this act,<sup>b</sup> and in no case shall any fee exceeding 1l. 3s. 6d. be allowed for employing a barrister as counsel in the cause, and the expense of employing a barrister or an attorney, either by plaintiff or defendant, shall not be allowed on taxation of costs in the case of a plaintiff where less than 5l. is recovered, or in the case of a defendant where less than 5l. is claimed or in any case unless by order of the judge."

Now, if the fees of the attorney of 10s. in the smaller class of actions and in the larger of 15s., and the fee of the barrister of 1l. 3s. 6d., are intended to apply to *each appearance in court*, the amount may not be objectionable. The fees allowed hitherto on writs of trial are 13s. 4d. to the attorney and a guinea to the barrister, with 2s. 6d. to his clerk. So that here there would be a similarity of charge to which the practitioner could not object. But then comes the serious question, whether besides these fees the court will be justified in allowing any professional charge for business done either *before* the trial or *incident* thereto? The 88th section is very comprehensive in its terms. It includes "*all the costs in any action or proceeding in the court*" and if the judge give no special direction, such costs are to "*abide the event of the action.*" It cannot be intended by the words "*in the court*" that no costs are to be allowed except such as relate to the time when the court is *actually sitting*, for the costs of entering the plaint and summoning the defendant, issuing subpoenas and serving the witnesses, are as clearly to be allowed as the costs of the hearing. The 91st section provides, that no person not being an attorney shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person *in the said court*. We cannot suppose that this means a mere appearance whilst the court is sitting, for if so, then any unqualified person may intermeddle in all interlocutory matters incident to an action, and steer clear only of an actual appearance in court. Consistently with the exclusion o

<sup>b</sup> What is intended by limiting the costs to 15s., "in any case within the summary jurisdiction given by the act?" In ordinary construction it would mean that in cases *not* within such summary jurisdiction the costs are not to be so limited; but what cases are there not within its summary jurisdiction? Are they the cases in which a jury is to be summoned?



and pleaded in the precise form given by the rule of Trinity Term, 1 Vict., "that the defendant never was indebted to the plaintiff to a greater amount than the said sum of 13*l.* 5*s.* 9*d.*, in respect of the said cause of action in the declaration mentioned." To this plea the plaintiff replied by accepting the money paid into court in discharge of the cause of action in respect of which it was paid in, but signed judgment for the residue. Upon a motion to set aside this judgment as irregular, it was successfully contended on behalf of the plaintiff, that the plea was only an answer to 13*l.* 5*s.* 9*d.*, which was admitted to have been due, but that it afforded no answer to the damages sustained by reason of the detention of the debt, and it was suggested that the plaintiff might be entitled to recover interest in respect of the debt, which could only be by way of damages. The damages, therefore, being part of the plaintiff's claim and remaining unanswered by the plea, the proper course was to sign judgment as the plaintiff had done.\* It was in vain insisted on for the defendant, that he had faithfully followed the prescribed form of plea, and that the damages in debt are merely nominal in order that the plaintiff might have his costs under the Statute of Gloucester.

After taking time for consideration, the deliberate judgment of the court was pronounced by *Pollock*, C. B., expressly admitting that the form of plea given by the rule is not accurate, as it omits to notice the damages. "In an action of debt," said the Chief Baron, "no doubt the plea must state that the defendant never was indebted to the plaintiff in a greater amount; but the question is, whether it must not also notice the damages for the detention of the debt? We think it must, in order to constitute an answer to the action, because it may happen that damages are a very important part of the plaintiff's claim,—as for instance, in debt on a mortgage deed, where the principal and interest are to be paid on a given day, the interest after that day can only be recovered as damages, and that interest may equal or even exceed the debt; and as it is impossible to tell on the face of the record whether the damages are substantial or not, we think the plea ought to be framed so as to include a payment into court on account of the damages; and the plea should be varied accordingly, in order to

adapt it to the nature of the action." The rule to set aside the judgment signed for damages was therefore discharged, but in consideration of the novelty of the point, and that the defendant had been misled by the form given by the new rules, the reporter states that the defendant was allowed to amend his plea on payment of the costs of the amendment only.

In order to preserve their clients from a similar or increased infliction, by payment of costs unnecessarily incurred, we should recommend our professional readers to lose no time in correcting the forms of a plea of payment into court in debt, which may be found in their offices. When the damages are substantial, as suggested in judgment of the court, the plea must be framed so as to show that a sum adequate to the damages has been paid into court in addition to the debt. In the more usual case, however, where the damages are merely nominal, and the payment of the debt is complete satisfaction, we apprehend it will be sufficient to add to the allegation in the statutory form, that the defendant never was indebted to the plaintiff, the words "*nor has the plaintiff sustained damages*" to a greater amount, &c., than the sum paid into court. But our readers may believe that we hazard this opinion with some diffidence in a case where the judges have already been twice so unfortunate as to have framed an imperfect plea. If the duty imposed on the judges of settling the forms of procedure in the new courts, under the stat. 9 & 10 Vict., c. 95, s. 78, does not engross the attention of those learned personages in the approaching term, during all the time they can spare from the ordinary business of their respective courts, it is possible that the point determined in *Lowe v. Steele* may suggest the expediency of a re-consideration of the form prescribed by the rule of Trinity Term, 1 Vict.

#### RESTORING ARREST ON MESNE PROCESS.

A BILL brought in by Mr. Warburton and Mr. Leader, "To restore Arrest on Mesne Process in Civil Actions under certain Limitations," has just been printed. It recites, that it has been found by experience, that the abolition of arrest on mesne process has greatly increased the expense and difficulty of compelling payment of debts, and has enabled debtors to continue to resist their creditors,

\* See 1 Wms. Saund. 28, n. 3.

until the greater part of their assets have been wasted or concealed, or distributed amongst favoured creditors; and that it is expedient to restore the power of arrest on mesne process in civil actions, with proper precautions to prevent such power from being abused: it is therefore proposed to enact as follows:—

1. That so much of an act, 1 & 2 Vict. c. 110, intituled, "An Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain cases, for extending the Remedies of Creditors against the Property of Debtors, and for amending the laws for the relief of Insolvent Debtors in England," as abolished arrest on mesne process, shall be and is hereby repealed.

2. That no writ of *capias ad respondendum* shall issue against any person, except upon the order of one of the London or district Commissioners of her Majesty's Court of Bankruptcy.

3. That no commissioner of the Court of Bankruptcy shall issue such order unless the creditor applying for the same shall file in court an affidavit, stating the particulars of his debt; and if the debt shall be on balance of account, or shall consist of more items than one, then annexing to his affidavit an account, commencing with the time when the account was last stated and agreed between himself and his debtor, if ever, and showing every subsequent item, and the balance.

4. That no commissioner shall issue such order unless the party applying for the same shall show to him a clear *prima facie* case of debt due, and shall make affidavit that the payment thereof has been twice demanded by letter, sent by post, addressed to the debtor at his last known place of residence, according to the usual and ordinary course of business; and that the second letter was sent not earlier than one week after the first letter, nor earlier than three weeks before the day of application to the court.

5. That the commissioner, before issuing such order, shall be careful in examining into the reality of the debt alleged to be due, and into its nature and consideration; and shall, for that purpose, require of the creditor demanding such order, the production of such books and papers and writings as may be necessary to evidence the reality of the debt; and shall also require the personal attendance of the creditor, or, in cases where the debt is alleged to be due to more persons than one, of one of such creditors, unless under special circumstances he shall think fit to dispense with such attendance.

6. That as soon as the alleged debtor shall be taken under such writ of *capias*, he shall be brought forthwith before a commissioner of the Court of Bankruptcy, and shall be at liberty to show either that the debt or any part thereof is not due, or that there is so much doubt about the reality of the debt as that the creditor ought to be left to establish his right in the proper

court of justice before being permitted to issue a *capias* against the debtor; and for such purpose shall have liberty to examine the person or persons at whose instance the *capias* issued, and to produce such books, papers, and writings as he may think necessary to explain his case, after which the commissioner may either discharge the party arrested, or order him to give bail, with two sufficient sureties, in such sum as shall appear to the commissioner to be actually due, for the payment of such sum as may thereafter be adjudged to be due, pursuant to such judgment when made.

7. That the party arrested shall be entitled to his discharge on payment into court of any sum for which the commissioner shall order him to give bail.

8. That the party arrested shall be released, if, being a person liable to the bankrupt laws, he shall have signed or shall sign a declaration of insolvency, pursuant to an act passed in the fifth and sixth years of her Majesty, intituled, "An Act for the Amendment of the Law of Bankruptcy;" or if not being a person liable to the bankrupt laws, he shall have presented or shall present a petition for relief pursuant to certain acts passed in the fifth and sixth years, and seventh and eighth years of her Majesty, intituled respectively, "An Act for the Relief of Insolvent Debtors," and "An Act to amend the Law of Insolvency, Bankruptcy, and Execution."

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### RELIGIOUS OPINIONS RELIEF.

9 & 10 VICT. c. 59.

An Act to relieve her Majesty's Subjects from certain Penalties and Disabilities in regard to Religious Opinions. [18th August, 1847.]

1. *Certain acts and parts of acts repealed.* 5 & 6 Edw. 6, c. 1, ss. 1, 2, 3, 4, 6; 1 Eliz. c. 1; 2 Eliz. c. 1, (I.); 1 Eliz. c. 2; 2 Eliz. c. 2, (I.); 5 Eliz. c. 1; 13 Eliz. c. 2; 29 Eliz. c. 6; 1 Jac. 1, c. 4; 3 Jac. 1, c. 1, s. 2, in part; 3 Jac. 1, c. 4; 7 Jac. 1, c. 6; 13 & 14 Car. 2, c. 4, s. 11; 17 & 18 Car. 2, c. 6, s. 6, (I.); 30 Car. 2, s. 2, s. 5, in part; 8 & 9 W. 3, c. 3, (S.) and all laws revised, ratified, and confirmed thereby. 11 & 12 W. 3, c. 4; 1 Anne, st. 1, c. 30; 2 Anne, c. 6, s. 1, (I.); s. 3; s. 4; 11 G. 2, c. 17; 17 & 18 G. 3, c. 49, s. 5, (I.) 18 G. 3, c. 60, s. 5; 23 & 24 G. 3, c. 38, (I.); 31 G. 3, c. 32, ss. 12, 15; s. 16; 33 G. 3, c. 21, s. 14, (I.); 33 G. 3, c. 44.—

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the commencement of this act the statutes or ordinances and the several acts hereinafter mentioned, or so much and such parts of any of the said acts as are herein-

after specified, shall be repealed; (that is to say.)

The statute or ordinances of the 54 & 55 Hen. 3, and the statute or ordinance commonly called *statutum judæismo* :

Also so much of an act passed in the 5 & 6 Edw. 6, intituled "An Act for the Uniformity of Service and Administration of Sacraments throughout the Realm," as enacts, "that from and after the feast of All Saints next coming all and every person and persons inhabiting within this realm, or any other the King's Majesty's dominions, shall diligently and faithfully, having no lawful or reasonable excuse to be absent, endeavour themselves to resort to their parish church or chapel accustomed, or, upon reasonable let thereof, to some usual place where common prayer and such service of God shall be used in such time of let, upon every Sunday, and other days ordained and used to be kept as holy days, and then and there to abide orderly and soberly during the time of common prayer, preachings, or other service of God there to be used and ministered, upon pain of punishment by the censures of the church," so far as the same affects persons dissenting from the worship or doctrines of the united church of England and Ireland, and usually attending some place of worship other than the established church: Provided always, that no pecuniary penalty shall be imposed upon any person by reason of his so absenting himself as aforesaid :

Also so much of the said act as enacts, "that if any manner of person or persons inhabiting and being within this realm, or any other the King's Majesty's dominions, shall, after the said feast of All Saints, willingly and wittingly hear and be present at any other manner or form of common prayer, of administration of the sacraments, of making of ministers in the churches, or of any other rites contained in the book annexed to this act, than is mentioned and set forth in the said book, or that it is contrary to the form of sundry provisions and exceptions contained in the aforesaid former statute, and shall be thereof convicted according to the laws of this realm, before the justices of assize, justices of oyer and determiner, justices of peace in their sessions, or any of them, by the verdict of twelve men, or by his or their own confession, or otherwise, shall, for the first offence suffer imprisonment for six months, without bail or mainprize, and for the second offence, being likewise convicted as is aforesaid, imprisonment for one whole year, and for the third offence, in like manner, imprisonment during his or their lives."

Also so much of the said act as enacts, "that for the more knowledge to be given hereof, and better observation of this law, all and singular curates shall, upon one Sunday every quarter of the year, during one whole year next following the aforesaid feast of All Saints next coming, read this present act in the church at the time of the most assembly,

and likewise once in every year following, at the same time declaring unto the people, by the authority of the scripture, how the mercy and goodness of God hath in all ages been shown to his people in their necessities and extremities, by means of hearty and faithful prayer made to Almighty God, especially where people be gathered together with one faith and mind to offer up their hearts by prayers as the best sacrifices that Christian men can yield :"

Also so much of any act or acts of the parliament of Ireland as may have extended to Ireland the provisions of the said act of the 5 & 6 Edward 6, so far as the same is hereby repealed :

Also so much of an act passed in the 1 Eliz. c. 1, intituled "An Act to restore to the Crown the ancient Jurisdiction over the Estate Ecclesiastical and Spiritual and abolishing all Foreign Powers repugnant to the same," and of an act of the parliament of Ireland passed in the 2 Eliz. 1, intituled "An Act restoring to the Crown the auncient Jurisdiction of the State Ecclesiasticall and Spirituall, and abolishing all Forreinne Power repugnant to the same," as makes it punishable to affirm, hold, stand with, set forth, maintain, or defend, as therein is mentioned, the authority, pre-eminence, power, or jurisdiction, spiritual or ecclesiastical, of any foreign prince, prelate, person, state, or potentate theretofore claimed, used, or usurped within this realm, or any dominion or country being within or under the power, dominion or obeisance of her Highness, or to put in use or execute anything for the extolling, advancement, setting forth, maintenance, or defence of any such pretended or usurped jurisdiction, power, pre-eminence, and authority, or any part thereof, or to abet, aid, procure, or counsel any person so offending: Provided always, and be it declared, that nothing in this enactment contained shall authorise or render it lawful for any person or persons to affirm, hold, stand with, set forth, maintain, or defend any such foreign power, pre-eminence, jurisdiction, or authority, nor shall the same extend further than to the repeal of the particular penalties and punishments therein referred to, but in all other respects the law shall continue the same as if this enactment had not been made: Provided further, that if any person in holy orders according to the rites and ceremonies of the united church of England and Ireland shall affirm, hold, stand with, set forth, maintain, or defend any such foreign power, pre-eminence, jurisdiction, or authority, such person shall be incapable of holding any ecclesiastical promotion, and, if in possession of any such promotion, may be deprived thereof by due course of law, in the same manner as for any other cause of deprivation:

Also so much of another act passed in the 1 Eliz. c. 2, intituled "An Act for the Uniformity of Common Prayer and Service in the Church, and Administration of the Sacra-

ments," and of another act of the parliament of Ireland passed in the 2 Eliz. c. 2, intituled "An Act for the Uniformity of Common Prayer and Service in the Church, and the Administration of Sacraments," as relates to a person's resorting to his parish church or chapel accustomed, or, upon reasonable let thereof, to some usual place where common prayer and such service of God as in such acts are mentioned are used in such time of let, upon Sundays and other days ordained and used to be kept as holy days, and to his then and there abiding orderly and soberly during the time of the common prayer, preaching, or other service of God there used and ministered :

Also an act passed in the 5 Eliz. c. 1, intituled "An Act for the Assurance of the Queen's Royal Power over all Estates and Subjects within Her Dominions :

Also an act passed in the 13 Eliz. c. 2, intituled "An Act against the bringing in and putting in execution of Bulls, Writings, or Instruments, and other superstitious Things, from the See of Rome," so far only as the same imposes the penalties or punishments therein mentioned ; but it is hereby declared that nothing in this enactment contained shall authorise or render it lawful for any person or persons to import, bring in, or put in execution within this realm any such bulls, writings, or instruments, and that in all respects, save as to the said penalties or punishments, the law shall continue the same as if this enactment had not been made :

Also an act passed in the 29 Eliz. c. 6, intituled "An Act for the more speedy and due Execution of certain Branches of the Statute made in the Twenty-third Year of the Queen's Majesty's reign, intituled 'An Act to retain the Queen's Majesty's Subjects in their due obedience :'

Also an act passed in the 1 Jac. 1, c. 4, intituled "An Act for the due Execution of the Statutes against Jesuites, Seminary Priests, Recusants," &c.

Also so much of an act passed in the 3 Jac. 1, c. 1, s. 2, intituled "An Act for a public Thanksgiving to Almighty God every Year on the Fifth Day of November," as enacts, "that all and every person and persons inhabiting within this realm of England and the dominions of the same shall always upon that day diligently and faithfully resort to the parish church or chapel accustomed, or to some usual church or chapel where the said morning prayer, preaching, or other service of God shall be used, and then and there to abide orderly and soberly during the time of the said prayers, preaching, or other service of God there to be used and ministered :"

Also an act passed in the said 3 Jac. 1, c. 4, intituled "An Act for the better discovering and repressing of Popish Recusants :"

Also an act passed in the 7 Jac. 1, c. 6, intituled "An Act for administering the Oath of Allegiance, and Reformation of Married Women Recusants :"

Also so much of an act passed in the 13 & 14 Car. 2, c. 4, s. 11, intituled "An Act for the Uniformity of Public Prayers, and Administration of Sacraments, and other Rites and Ceremonies, and for establishing the Form of making, ordaining, and consecrating Bishops, Priests, and Deacons in the Church of England," as makes any schoolmaster or other person instructing or teaching youth in any private house or family as a tutor or schoolmaster punishable for instructing or teaching any youth as a tutor or schoolmaster before licence obtained from his respective archbishop, bishop, or ordinary of the diocese, according to the laws and statutes of this realm, and before such subscription and acknowledgment made as in the said act is mentioned :

Also so much of the last-mentioned act whereby any act or part of any act herein-before repealed has been confirmed or kept in force :

And also so much of any act or acts of parliament whereby the said parts of the said act of the 13 & 14 Car. 2, herein-before repealed have been confirmed or incorporated in any other act or acts of parliament :

Also so much of an act of the parliament of Ireland passed in the 17 & 18 Car. 2, c. 6, s. 6, as requires that schoolmasters or other persons instructing or teaching youth in private houses or families as tutors or schoolmasters should take the oath of allegiance and supremacy, and as makes such schoolmasters or other persons punishable for so instructing or teaching youth before license obtained from their respective archbishop, bishop, or ordinary of the diocese, and before such subscription and acknowledgment made as in the said act is mentioned :

Also so much of an act passed in the 30 Car. 2, st. 2, s. 5, intituled "An Act for the more effectual preserving the King's Person and Government by disabling Papists from sitting in either House of Parliament," as enacts that "every person now or hereafter convicted of popish recusancy who hereafter shall, at any time after the said first day of December, come advisedly into or remain in the presence of the King's Majesty or Queen's Majesty, or shall come into the court or house where they or any of them reside, as well during the reign of his present Majesty (whose life God long preserve) as during the reigns of any of his royal successors, kings or queens of England, shall incur and suffer all the pains, penalties, forfeitures, and disabilities in this act mentioned or contained :"

Also an act of the parliament of Scotland passed in the 8 & 9 W. 3, c. 3, intituled "An Act for preventing the Growth of Popery," and all laws, statutes, and acts of parliament revived, ratified, and perpetually confirmed by the said act of King William's first parliament, except as to the form of the formula in such last-mentioned act contained :

Also an act passed in the 11 & 12 W. 3, c. 4,

intituled "An Act for the further preventing the growth of Popery :

Also an act passed in the 1 Anne, st. 1, c. 30, intituled "An act to oblige Jews to maintain and provide for their Protestant children :"

Also so much of an act of the parliament of Ireland passed in the 2 Anne, c. 6, s. 1, intituled "An Act to prevent the further Growth of Popery," as enacts, "that if any person or persons shall seduce, persuade, or pervert any person or persons professing or that shall profess the Protestant religion to renounce, forsake, or abjure the same, and to profess the Popish religion, or reconcile him or them to the church of Rome, then and in such case every such person and persons so seducing, as also every such Protestant and Protestants who shall be so seduced, perverted, and reconciled to Popery, shall for the said offences, being thereof lawfully convicted, incur the danger and penalty of præmunire mentioned in the Statute of Præmunire made in England in the sixteenth year of the reign of King Richard the Second."

Also so much of the said last-mentioned act of Queen Anne as empowers the Court of Chancery to make such order for the maintenance of Protestant children not maintained by their Popish parents, suitable to the degree and ability of such parents and to the age of such child, and also for the portions of Protestant children to be paid at the decease of their Popish parents, as that court shall adjudge fit, suitable to the degree and ability of such parents, and as empowers the said court to make such order for the educating in the Protestant religion the children of Papists, where either the father or mother of such children shall be Protestants, till the age of eighteen years of such children, as to that court shall seem meet, and in order thereto to limit and appoint where, and in what manner, and by whom, such children shall be educated; and as enacts that the father of such children shall pay the charges of such education as shall be directed by the said court :

And an act passed in the 11 G. 2, c. 17, intituled "An Act for securing the Estates of Papists conforming to the Protestant Religion against Disabilities created by several Acts of Parliament relating to Papists; and for rendering more effectual the several Acts of Parliament made for vesting in the Two Universities, in that part of Great Britain called England the Presentation of Benefices belonging to Papists," except so much of the said Act as relates to any advowson or right of presentation, collation, nomination, or donation of or to any benefice, prebend, or ecclesiastical living, school, hospital, or donative, or any grant or avoidance thereof, or any admission, institution, or induction to be made thereupon, but so as that the repeal of the said act shall not in anywise affect or prejudice the right, title, or interest of any person in or to any lands, tenements, or

hereditaments under and by virtue of the provisions of the said act at the time of such repeal :

Also so much of an act of the parliament of Ireland passed in the 17 & 18 G. 3, c. 49, s. 5, intituled "An Act for the Relief of His Majesty's Subjects of this Kingdom professing the Popish Religion, as enacts, "that no maintenance or portion shall be granted to any child of a Popish parent, upon a bill filed against such parent pursuant to the aforesaid act of the second of Queen Anne, out of the personal property of such Papist, except out of such leases which they may hereafter take under the powers granted in this act :"

Also so much of an act passed in the 18 G. 3, c. 60, s. 5, intituled "An Act for relieving His Majesty's Subjects professing the Popish Religion from certain Penalties and Disabilities imposed on them by an Act made in the Eleventh and Twelfth Years of the Reign of King William the Third, intituled 'An Act for the further preventing the Growth of Popery,' " as enacts "that nothing in this act contained shall extend or be construed to extend to any Popish bishop, priest, jesuit or schoolmaster who shall not have taken and subscribed the above oath in the above words before he shall have been apprehended, or any prosecution commenced against him :"

Also so much of an act of the parliament of Ireland passed in the 23 & 24 G. 3, c. 39, intituled "An Act for extending the Provisions of an Act passed in this Kingdom in the Nineteenth and Twentieth Years of His Majesty's Reign, intituled 'An Act for naturalizing such Foreign Merchants, Traders, Artificers, Artizans, Manufacturers, Workmen, Seamen, Farmers, and others as shall settle in this Kingdom,' " as excepts out of the benefit of that act persons professing the Jewish religion :

Also so much of an act passed in the 31 G. 3, c. 32, intituled "An Act to relieve, upon Conditions and under Restrictions, the Persons therein described from certain Penalties and Disabilities to which Papists or Persons professing the Popish Religion are by Law subject," as enacts "that nothing herein contained shall be construed to give any ease, benefit, or advantage to any person who shall, by preaching, teaching, or writing, deny or gainsay the oath of allegiance, abjuration, and declaration herein-before mentioned and appointed to be taken as aforesaid, or the declarations or doctrines therein contained, or any of them :"

Also so much of the said last-mentioned act as provides and enacts, "that no schoolmaster professing the Roman Catholic religion shall receive into his school for education the child of any Protestant father :"

Also so much of the said last-mentioned act as provides and enacts, "that no person professing the Roman Catholic religion shall be permitted to keep a school for the education of youth until his or her name and descrip-

tion as a Roman Catholic schoolmaster or schoolmistress shall have been recorded at the quarter or general session of the peace for the county or other division or place where such school shall be situated, by the clerk of the peace of the said court, who is hereby required to record such name and description accordingly upon demand by such person, and to give a certificate thereof to such person as shall at any time demand the same, and no person offending in the premises shall receive any benefit of this act."

Also so much of an act of the parliament of Ireland passed in the 33 G. 3, c. 21, s. 14, intituled "An Act for the Relief of His Majesty's Popish or Roman Catholic Subjects of Ireland," as provides, "that no Papist or Roman Catholic, or person professing the Roman Catholic or Popish religion, shall take any benefit by or under this act, unless he shall have first taken and subscribed the oath and declaration in this act contained and set forth, and also the said oath appointed by the said act passed in the Thirteenth and Fourteenth Years of His Majesty's Reign, intituled 'An Act to enable His Majesty's Subjects, of whatever Persuasion, to testify their Allegiance to Him in some One of His Majesty's Four Courts in Dublin, or at the General Sessions of the Peace, or at any Adjournment thereof, to be holden for the County, City, or Borough wherein such Papist or Roman Catholic, or Person professing the Roman Catholic or Popish Religion, doth inhabit or dwell, or before the going Judge or Judges of Assize in the County wherein such Papist or Roman Catholic, or Person professing the Roman Catholic or Popish Religion, doth inhabit and dwell in open Court:'"

Also an Act passed in the said 33 G. 3, c. 34, intituled "An Act for requiring a certain Form of Oath of Abjuration and Declaration from His Majesty's Subjects professing the Roman Catholic Religion in that Part of Great Britain called Scotland."

2. *Jews to be subject to the same laws as Protestant Dissenters in respect to schools and places of worship.*—And be it enacted, That from and after the commencement of this act her Majesty's subjects professing the Jewish religion, in respect to their schools, places for religious worship, education, and charitable purposes, and the property held therewith, shall be subject to the same laws as her Majesty's Protestant subjects dissenting from the Church of England are subject to, and not further or otherwise.

3. *Not to affect pending suits.*—Provided, That nothing in this act contained shall affect any action or suit actually pending or commenced, or any property now in litigation, discussion, or dispute, in any of her Majesty's courts of law or equity.

4. *Disturbing religious assemblies.*—That from and after the commencement of this act all laws now in force against the wilfully and

maliciously or contemptuously disquieting or disturbing any meeting, assembly, or congregation of persons assembled for religious worship, permitted or authorised by any former act or acts of parliament, or the disturbing, molesting, or misusing any preacher, teacher, or person officiating at such meeting, assembly, or congregation, or any person or persons there assembled, shall apply respectively to all meetings, assemblies, or congregations whatsoever of persons lawfully assembled for religious worship, and the preachers, teachers, or persons officiating at such last-mentioned meetings, assemblies, or congregations, and the persons there assembled.

5. *Act may be amended, &c.*—That this act may be repealed, altered, or varied at any time within this session of parliament.

## NOTES OF THE WEEK.

### THE LATE MR. JUSTICE WILLIAMS.

WE noticed briefly last week the unexpected and rather sudden death of this learned judge, and stated the dates of his several professional promotions, from his call to the bar in 1804, to his elevation to the bench in 1834. Few possessed so large a share of the regard, both of the members of the bar and his brethren on the bench, as the deceased; and we hope in an early number to give a full memoir of his distinguished career and eminent attainments.

### THE NEW JUDGE.

Rumour has been very busy with the names of many well-known leaders of the bar, and with some who, though not leaders, are eminent in the ranks of legal learning. It is understood, as might have been expected, that the Attorney-General has declined the judgeship. If it be accepted by the Solicitor-General, then a vacancy arises in his office.

### SMALL DEBT COURT RULES.

We have not yet seen any notice in the Gazette of the intention of government to carry the Small Debts Act into effect. The preparation of the rules and regulations of practice will, no doubt, occupy a considerable time. The judges of the superior courts, with the Lord Chancellor and the Attorney and Solicitor-General, who may be considered responsible for the efficient working of the act, must have time to settle the rules, and these learned and eminent functionaries ought not to be deprived of their long vacation. They will have many details to consider.

## LIST OF PUBLIC GENERAL ACTS,

9 &amp; 10 VICTORIA.

CAP. 1. An Act for the further Amendment of the Acts for the Extension and Promotion of Public Works in Ireland.

CAP. 2. An Act to authorize Grand Juries in Ireland, at the Spring Assizes of the present year, to appoint Extraordinary Presentment Sessions; to empower such Sessions to make Presentment for County Works, and to provide Funds for the Execution of such Works; and also to provide for the more prompt payment of Contractors for Works under Grand Jury Presentments in Ireland.

CAP. 3. An Act to encourage the Sea Fisheries of Ireland, by promoting and aiding with Grants of Public Money the Construction of Piers, Harbours, and other Works.

CAP. 4. An Act to amend the Acts for promoting the Drainage of Lands, and improvement of Navigation by Water Power in connexion with such Drainage, in Ireland; and to afford Facilities for increased Employment for the labouring Classes in Works of Drainage during the present Year.

CAP. 5. An Act to amend an Act for regulating the Construction and Use of Buildings in the Metropolis and its Neighbourhood.

CAP. 6. An Act to make Provision until the 1st day of September, 1847, for the Treatment of poor Persons afflicted with Fever in Ireland.

CAP. 7. An Act to apply the Sum of 8,000,000*l.* out of the Consolidated Fund to the Service of the Year 1846.

CAP. 8. An Act to make further Provisions as to unclaimed Stock and Dividends of the South Sea Company.

CAP. 9. An Act for amending the Act for rendering effective the Services of the Chelsea Out-Pensioners, and extending to the Out-Pensioners of Greenwich Hospital.

CAP. 10. An Act for regulating the Payment of the Out-Pensioners of Greenwich and Chelsea Hospitals.

CAP. 11. An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters.

CAP. 12. An Act for the Regulation of Her Majesty's Royal Marine Forces while on shore.

CAP. 13. An Act to indemnify such Persons in the United Kingdom as have omitted to qualify themselves for Offices and Employments, and to extend the Time limited for these Purposes respectively until the 25th day of March, 1847.

CAP. 14. An Act to continue until the 1st day of March, 1847, and from thence to the end of the then next Session of Parliament, the several Acts relating to Insolvent Debtors in India.

CAP. 15. An Act for raising the Sum of 18,380,200*l.* by Exchequer Bills, for the Service of the Year 1846.

CAP. 16. An Act to authorize the Inclosure

of certain Lands in pursuance of the Recommendation of the Inclosure Commissioners for England and Wales.

CAP. 17. An Act for the Abolition of the exclusive Privilege of Trading in Burghs in Scotland.

CAP. 18. An Act to amend Two clerical Errors in an Act of the last Session, for regulating the Labour of Children, young Persons, and Women in Print Works.

CAP. 19. An Act to amend an Act of the Second and Third Years of His late Majesty, by providing additional Booths or Polling Places at Elections in Ireland where the Number of Electors whose Names shall begin with the same Letter of the Alphabet shall exceed a certain Number.

CAP. 20. An Act to amend an Act of the 2nd Year of Her present Majesty, for providing for the Custody of certain Monies paid, in pursuance of the Standing Orders of either House of Parliament, by Subscribers of Works or Undertakings to be effected under the Authority of Parliament.

CAP. 21. An Act to enable the Right Hon. Henry Viscount Hardinge to receive the full Benefit of an Annuity of 5,000*l.* granted to him by the East India Company.

CAP. 22. An Act to amend the Laws relating to the Importation of Corn.

CAP. 23. An Act to alter certain Duties of Customs.

CAP. 24. An Act for removing some Defects in the Administration of Criminal Justice.

CAP. 25. An Act for preventing malicious Injuries to Persons and Property by Fire, or by explosive or destructive Substances.

CAP. 26. An Act for abolishing the Office of Superintendent of Convicts under Sentence of Transportation.

CAP. 27. An Act to amend the Laws relating to Friendly Societies.

CAP. 28. An Act to facilitate the Dissolution of certain Railway Companies.

CAP. 29. An Act for granting to Her Majesty, until the 5th day of August, 1846, certain Duties on Sugar imported into the United Kingdom.

CAP. 30. An Act to define the Notice of Elections of Members to serve in Parliament for Cities, Towns, or Boroughs in Ireland.

CAP. 31. An Act to settle an Annuity on Viscount Hardinge, and the Two next surviving Heirs Male of the Body of the said Viscount Hardinge to whom the Title of Viscount Hardinge shall descend, in consideration of his great and brilliant Services.

CAP. 32. An Act to settle an Annuity on Lord Gough and the Two next surviving Heirs Male of the Body of the said Lord Gough to whom the Title of Lord Gough shall descend, in consideration of his important Services.

CAP. 33. An Act to amend the Laws relating to Corresponding Societies and the licencing of Lecture Rooms.

CAP. 34. An Act to enable the Commissioners of Her Majesty's Woods to construct a new Street from Spitalfields to Shoreditch.

CAP. 35. An Act to continue until the 31st day of December, 1848, and to the End of the then next Session of Parliament, an Act of the Tenth Year of King George the Fourth, for providing for the Government of His Majesty's Settlements in Western Australia on the Western Coast of New Holland.

CAP. 36. An Act to continue until the 1st day of January, 1851, and to the end of the then next Session of Parliament, and to amend an Act for establishing an Office for the Benefit of Coalwhippers of the Port of London.

CAP. 37. An Act to amend the Laws relating to the Office of Coroner and the Expenses of Inquests in Ireland.

CAP. 38. An Act to empower the Commissioners of Her Majesty's Woods to form a Royal Park in Battersea Fields in the County of Surrey.

CAP. 39. An Act to enable the Commissioners of Her Majesty's Woods to construct an Embankment and Roadway on the North Shore of the River Thames from Battersea Bridge to Vauxhall Bridge, and to build a Suspension Bridge over the said River at or near Chelsea Hospital, with suitable Approaches thereto, including a Street from Lower Sloan Street to the Northern Extremity of the Bridge.

CAP. 40. An Act to declare certain Rope-works not within the Operation of the Factory Acts.

CAP. 41. An Act for granting to Her Majesty, until the 5th day of September, 1846, certain Duties on Sugar imported into the United Kingdom.

CAP. 42. An Act to authorise a Loan from the Consolidated Fund to the New Zealand Company.

CAP. 43. An Act to suspend until the 1st day of October, 1847, the making of List and the Ballots and Enrolments for the Militia of the United Kingdom.

CAP. 44. An Act to remove Doubts as to the Election of Members to serve in Parliament for the County of Chester, the Boroughs situate therein, and for the County of the City of Chester.

CAP. 45. An Act to continue until the 1st day of September, 1847, certain of the Provisions of an Act of the Fifth and Sixth Years of Her present Majesty, for amending the Constitution of the Government of Newfoundland.

CAP. 46. An Act to continue until the 31st day of December 1851, an Act of the Fourth and Fifth Years of Her present Majesty, for authorising and facilitating the Completion of a Survey of Great Britain, Berwick-upon-Tweed, and the Isle of Man.

CAP. 47. An Act to apply the Sum of 4,000,000*l.* out of the Consolidated Fund, and the Surplus of Ways and Means, to the Service of the Year 1846.

CAP. 48. An Act for legalising Art Unions.

CAP. 49. An Act to continue until the 1st day of October, 1847, and to the end of the then next Session of Parliament, an Act for authorising the Application of Highway Rates to Turnpike Roads.

CAP. 50. An Act to continue until the 1st day of October, 1847, and to the end of the then Session of Parliament, the Exemption of Inhabitants of Parishes, Townships, and Villages from Liability to be rated as such, in respect of Stock in Trade or other Property, to the Relief of the Poor.

CAP. 51. An Act to continue certain Turnpike Acts until the 1st day of October, 1847, and to the end of the then next Session of Parliament.

CAP. 52. An Act to continue to the 1st day of October, 1847, and to the end of the then next Session of Parliament, the Act to amend the Laws relating to Loan Societies.

CAP. 53. An Act to continue the Copyhold Commission until the 31st day of July, 1847, and to the end of the then next Session of Parliament.

CAP. 54. An Act to extend to all Barristers practising in the Superior Courts at Westminster the Privileges of Serjeants-at-Law in the Court of Common Pleas.

CAP. 55. An Act to defray until the 1st day of August, 1847, the Charge of the Pay, Clothing, and contingent and other Expenses of the Disembodied Militia in Great Britain and Ireland; to grant Allowances in certain Cases to Subaltern Officers, Adjutants, Paymasters, Quartermasters, Surgeons, Assistant Surgeons, Surgeons Mates, and Serjeant Majors of the Militia; and to authorise the Employment of the Non-commissioned Officers.

CAP. 56. An Act to provide Forms of Proceedings under the Acts relating to the Duties of Assessed Taxes, and the Duties on Profits arising from Property, Professions, Trades, and Offices in England.

CAP. 57. An Act for regulating the Gauge of Railways.

CAP. 58. An Act to amend an Act of the Seventh and Eighth Years of Her present Majesty, for reducing, under certain Circumstances, the Duties payable upon Books and Engravings.

CAP. 59. An Act to relieve Her Majesty's Subjects from certain Penalties and Disabilities in regard to Religious Opinions.

CAP. 60. An Act to exempt from Stamp Duty Bonds and Warrants to confess Judgment executed by High Constables or Collectors of Grand Jury Cess, or their Sureties, in Ireland.

CAP. 61. An Act to amend an Act of the Seventh Year of King George the Fourth, for consolidating and amending the Law relating to Prisons in Ireland.

CAP. 62. An Act to abolish Deodands.

CAP. 63. An Act for granting certain Duties on Sugar and Molasses.

CAP. 64. An Act to enable Courts of Law in Ireland to give Relief against adverse Claims made upon Persons having no Interest in the Subject Matter of such Claims.

CAP. 65. An Act to provide for the more effectual Execution of the Office of a Justice of the Peace, and the better Administration of the Police, within the Borough of Wolverhampton



and certain Parishes and Places in the Neighbourhood thereof, all in the County of Stafford.

CAP. 66. An Act to amend the Laws relating to the Removal of the Poor.

CAP. 67. An Act to remove Doubts concerning Citations, and Services and Execution of Diligence, in Scotland.

CAP. 68. An Act for better enabling the Burial Service to be performed in One Chapel where contiguous Burial Grounds shall have been provided for Two or more Parishes or Places.

CAP. 69. An Act to authorize until the 31st day of July, 1847, and to the end of the then next Session of Parliament, the Regulation of the Annuities and Premiums of the Naval Medical Supplemental Fund Society.

CAP. 70. An Act to amend the Act to facilitate the Inclosure and Improvement of Commons.

CAP. 71. An Act to amend an Act of the present Session, intituled "An Act to authorise Grand Juries in Ireland, at the Spring Assizes of the present Year, to appoint Extraordinary Presentment Sessions; to empower such Sessions to make Presentment for County Works; and to provide Funds for the Execution of such Works; and also to provide for the more prompt Payment of Contractors for Works under Grand Jury Presentments in Ireland.

CAP. 72. An Act to amend the Act for Marriages in Ireland, and for registering such Marriages.

CAP. 73. An Act further to amend the Acts for the Commutation of Tithes in England and Wales.

CAP. 74. An Act to encourage the Establishment of public Baths and Wash-houses.

CAP. 75. An Act to regulate Joint Stock Banks in Scotland and Ireland.

CAP. 76. An Act for the Abolition of the exclusive Privilege of Trading, or of regulating Trades, in Cities, Towns, or Boroughs in Ireland.

CAP. 77. An Act to amend the Acts relating to the Offices of the House of Commons.

CAP. 78. An Act to authorise a further Advance of Money out of the Consolidated Fund towards defraying the Expense of County Works presented in Ireland.

CAP. 79. An Act to continue until the 31st day of July, 1847, and to the end of the then Session of Parliament, an Act of the Fifth and Sixth Years of Her present Majesty, for amending the Law relating to Private Lunatic Asylums in Ireland.

CAP. 80. An Act to authorize the Advance of Money out of the Consolidated Fund, for carrying on Public Works and Fisheries, and Employment of the Poor.

CAP. 81. An Act for regulating the Deduction of the Bank of England of Income Tax Duty in respect to certain Offices.

CAP. 82. An Act to amend an Act of the present Session for authorising a Loan from the Consolidated Fund to the New Zealand Company.

CAP. 83. An Act to empower the Commissioners for the Issue of Loans for Public Works and Fisheries to make Loans in Money to the Commissioners of Her Majesty's Woods in lieu of Loans heretofore authorized to be made in Exchequer Bills.

CAP. 84. An Act to amend the Laws concerning Lunatic Asylums and the Care of Pauper Lunatics in England.

CAP. 85. An Act to authorize the Application of Money for the Purposes of Loans for carrying on Public Works in Ireland.

CAP. 86. An Act to extend and consolidate the Powers hitherto exercised by the Commissioners of Public Works in Ireland, and to appoint additional Commissioners.

CAP. 87. An Act for promoting the voluntary Establishment in Boroughs and certain Cities and Towns in Ireland of public Baths and Wash-houses.

CAP. 88. An Act to remove Doubts as to the Legality of certain Assignments of Ecclesiastical Patronage.

CAP. 89. An Act to continue certain Acts for regulating Turnpike Roads in Ireland until the 31st day of July, 1847, and to the end of the then Session of Parliament.

CAP. 90. An Act to prevent the Use of Stills by unlicensed Persons.

CAP. 91. An Act to continue certain Patent Commissions until the Exhibition of the Commissions revoking them.

CAP. 92. An Act to provide for the Preparation, Audit, and Presentation to Parliament of annual Accounts of the Receipt and Expenditure of the Naval and Military Departments.

CAP. 93. An Act for compensating the Families of Persons killed by Accidents.

CAP. 94. An Act to enable the Legislatures of certain British Possessions to reduce or repeal certain Duties of Customs.

CAP. 95. An Act for the more easy Recovery of Small Debts and Demands in England.

CAP. 96. An Act for the more speedy Removal of certain Nuisances, and to enable the Privy Council to make Regulations for the Prevention of contagious and epidemic Diseases until the 31st day of August, 1847, and to the end of the then next Session of Parliament.

CAP. 97. An Act to provide for removing the Charge of the Constabulary force in Ireland from the Counties, and for enlarging the Reserve Force; and to make further Provision for the Regulation and Disposition of the said Constabulary Force.

CAP. 98. An Act to amend the Law for regulating the Hours of receiving and delivering Goods and Chattels as Pawns in Pawnbrokers' Shops.

CAP. 99. An Act for consolidating and amending the Laws relating to Wreck and Salvage.

CAP. 100. An Act for the Regulation of Steam Navigation, and for requiring sea-going Vessels to carry Boats.

CAP. 101. An Act to authorise the Advance

of Public Money to a limited Amount, to promote the Improvement of Land in Great Britain and Ireland by Works of Drainage.

CAP. 102. An Act to amend the Laws relating to the Customs.

CAP. 103. An Act to make further Provision for the Government of the New Zealand Islands.

CAP. 104. An Act to amend an Act for regulating the Sale of Waste Land belonging to the Crown in the Australian Colonies, and to make further Provision for the Management thereof.

CAP. 105. An Act for constituting Commissioners of Railways.

CAP. 106. An Act for making preliminary Inquiries in certain Cases of Applications for Local Acts.

CAP. 107. An Act to facilitate the Employment of the labouring Poor for a limited Period in the distressed Districts in Ireland.

CAP. 108. An Act to provide additional Funds for Loans and Grants for Public Works in Ireland.

CAP. 109. An Act to authorize a further Issue of Money in aid of Public Works of acknowledged Utility in poor Districts in Ireland.

CAP. 110. An Act to amend the Law relating to the Valuation of rateable Property in Ireland.

CAP. 111. An Act to amend the Law in Ireland as to Ejectments and Distresses, and as to the Occupation of Lands.

CAP. 112. An Act to facilitate and encourage the granting of certain Leases for Terms of Years in Ireland.

CAP. 113. An Act to improve the Proceedings in Prohibition and on Writs of Mandamus in Ireland.

CAP. 114. An Act for the further Amendment of an Act of the Sixth Year of Her present Majesty, for regulating the Irish Fisheries.

CAP. 115. An Act to amend the Laws as to District Lunatic Asylums in Ireland; to provide for the Expense of the Maintenance of certain Lunatic Poor removed from the Richmond Lunatic Asylum, Dublin, for want of Room therein; and to provide for the Salaries and Expenses incident to the Office of Inspector of Lunatics in Ireland.

CAP. 116. An Act to apply the Sum of 8,356,173*l.* 17*s.* 11*d.* out of the Consolidated Fund, and Monies in the Exchequer, to the Service of the Year 1846, and to appropriate the Supplies granted in this Session of Parliament.

CAP. 117. An Act to authorize the Inclosure of certain Lands pursuant to a Special Report of the Inclosure Commissioners for England and Wales.

## COMMITMENT.

*Warrant.*—In a commitment in execution, under stat. 4 G. 4, c. 34, s. 3, which is intended by the statute to operate as a conviction, the warrant must show that the magistrate has done all that is necessary to make the conviction lawful. Therefore, where it did not sufficiently appear on the face of the warrant of commitment, that the witnesses in support of the charge had been examined in the prisoner's presence: *Held*, that he was entitled to his discharge. *Reg. v. Tordoff*, 1 D. & M. 693.

Cases cited in the judgment: *Johnson v. Reid*, 6 M. & W. 124; *Rex v. Baker*, 2 Stra. 124; *Rex v. Selway*, 2 Chit. 522.

## CORPORATION.

*Acting without seal.*—*Quashing mandamus.*—A resolution, on the reappointment of a town clerk by a corporation after stat. 5 & 6 W. 4, c. 76, to increase his salary in compensation for the loss of former emoluments, is not valid unless executed under seal. Such appointment cannot, therefore, be proved by an entry of it in the minutes of the town council. After a mandamus has been granted, return made, and an issue thereon tried, the court will not quash the mandamus on grounds which were or might have been discussed on showing cause against the application for it; as, that a suggestion on which the motion was made is untrue. A mandamus for compensation, under stat. 5 & 6 W. 4, c. 76, s. 66, was moved for, on the ground that the prosecutor had by the passing of the act lost the emoluments of an office, there had been no agreement between the prosecutor and the corporation that such increase should be deemed a compensation for the loss. On return, and trial of an issue bringing this fact into question, the judge and jury declared themselves of opinion that such an agreement had existed. *Held*, no ground for quashing the mandamus.

The mandamus required the corporation, by its corporate style, to assess compensation, (instead of requiring the council to assess compensation; and the corporation to execute a bond.) After return, and issue in fact tried,

*Held*, that, assuming the writ to be materially defective in form, the court ought not to quash it on motion. *Reg. v. Stamford, Mayor of*, 6 Q. B. 433.

Case cited in the judgment: *Arnold v. Mayor of Poole*, 4 M. & G. 860.

## ELECTIONS.

See *Voting*.

## EXCISE.

*Sale of tobacco.*—*Excise license acts.*—*Pleading.*—The 25th and 26th sections of the Excise License Act, 6 Geo. 4, c. 81, which subject to penalties any manufacturer of or dealer in or seller of tobacco, who shall not have his name painted on his entered premises in manner therein mentioned, or who shall manufacture, deal in, retail, or sell tobacco without taking out the license required for

## ANALYTICAL DIGEST OF CASES.

### REPORTED IN ALL THE COURTS.

### Courts of Common Law.

## I. CONSTRUCTION OF STATUTES.

### ANNUITY.

See *Stamp*.

that purpose, do not avoid a contract of sale of tobacco made by a manufacturer or dealer who has not complied with the requisites of these sections; their effect is merely to impose a penalty on the offending party for the benefit of the revenue.

But where it appears that the intention of the legislature was to prohibit the contract itself, although that can be only for purposes of revenue, the contract is illegal and void, and no action can be maintained upon it.

An allegation in a plea, that the tobacco, for the price of which the action was brought, was sold by the plaintiffs "as manufacturers of tobacco," after the stat. 6 G. 4, c. 81, and that they had not a license under that act, is not a sufficiently direct allegation that the plaintiffs were manufacturers of tobacco, so as to come within the provisions of the act. *Smith v. Mawhood*, 14 M. & W. 452.

Case cited in the judgment: *Johnson v. Hudson*, 11 East, 180.

#### FACTORS.

A., residing abroad, being the owner of goods, consigned them by a bill of lading, making them deliverable in London to the consignee or his assigns; and having indorsed the bill of lading in blank, transmitted it to his factor, with instructions to receive and to sell the goods. The factor received the goods, entered them in his own name at the custom house, and obtained, without the privity or express consent of the owner, a dock warrant in his own name, it being the usage at the docks to give such document to the person in whose name they are entered, and pledged such dock-warrant for advances beyond the charges for which the factor had a lien: *Held*, that, under these circumstances, the factor was not intrusted with a dock-warrant within the meaning of the stat. 6 G. 4, c. 94, s. 2.

A party intrusted with the bill of lading for the purpose of selling the goods mentioned in it, is not, in consequence of being so intrusted, to be considered as intrusted with the dock-warrant, notwithstanding that his possession of the bill of lading, and of the goods under it, enables him to obtain the dock-warrant. *Hatfield v. Phillips*, 14 M. & W. 665.

#### FAIR.

*Reasonable bye-law.*—*Holding fair on a highway.*—The council of a borough made the following bye-law, by virtue of a charter empowering them to make bye-laws, and of stat. 5 & 6 W. 4, c. 76, s. 90, That no person should erect any booth for the purpose of any show or public entertainment in any public place within the borough without license from the mayor, which license should not be given at or for any other time than during the annual fairs, if three inhabitant householders, residing within 100 yards of the place intended to be used, should have previously memorialized the mayor in writing to withhold such license; and that any such license given at or for any other time than during the said fairs should be revoked

by the mayor and become void, if and so soon as three inhabitant householders residing within 100 yards, &c., should memorialize the mayor in writing to revoke the same; such last-mentioned memorial to be presented within 48 hours after the building of such booth should have been commenced, and the revocation to be notified forthwith to the party employed or interested in the building; and any person erecting or continuing a booth in contravention of the bye-law to forfeit a sum not exceeding 5*l*.

*Held* an unreasonable bye-law, and wholly void, though duly published and notified to a secretary of state and not disallowed.

To a count in trespass for breaking down and removing plaintiff's booth, defendant pleaded that, before and at the time, &c., there was a public highway *through, over, and along a close called A.*, for all the liege subjects, &c.; and that the booth had been and was wrongfully erected and standing *in and across the said highway*, and obstructing the same, wherefore defendant, being a liege subject, &c., and having occasion to use the said highway, committed the alleged trespass, in order to remove the obstruction. Replication, That the said close is in the borough of *B.*, which is an immemorial borough, and that an immemorial fair for the sale of all kinds of goods was, for three weeks from a certain day in every year, holden in the said close, that is to say, on certain parts thereof used for that purpose, but *leaving open a sufficient part of the said close, and also of the said highway, for the subjects, &c., to go, return, pass, &c., in and along the same highway.* And that there was an immemorial custom in the said borough, that every liege subject using the trade of a victualler hath, during the said fairs, been used, &c., for the purpose of carrying on his said trade, to enter upon any part of the said close used for the purpose of such fair, but leaving as aforesaid, and, for carrying on his said trade, to erect a booth there, and to continue such booth until a reasonable time after the end of such fair, paying a reasonable compensation to the owner of the soil. And that plaintiff, being a liege subject and a victualler, did, during such fair, erect his said booth on one of the parts of the said close then and theretofore used for the fair, (leaving as aforesaid,) according to the custom, and continued such booth there till defendant, during the fair, committed the trespasses.

*Held*, on demurrer, that the custom was reasonable, for that a highway might have been granted before legal memory, subject, in parts, to interruption for a beneficial public purpose and for a limited time.

And that the plaintiff was right in replying specially as above, and could not have traversed the existence of a highway over the *locus in quo*, because, consistently with the custom, that spot might sometimes be used as a highway and sometimes not, and it did not, by temporary occupation under the custom, cease to be a highway.

Issues being joined in law and in fact, the plaintiff, after judgment against him on the former, the latter being untried, obtained a rule to discontinue on payment of costs. On taxation, the Master made his allocatur for the plaintiff's and defendant's costs respectively, not striking a balance. The plaintiff, to whom the larger sum was due, took out execution for the balance between his costs and the defendant's.

¶ *Held*, that he was entitled to his costs of demurrer, notwithstanding the discontinuance. And the court refused, on motion, to set aside the execution as irregularly issued for a balance instead of the gross sum awarded for costs. *Elwood v. Bullock*, 6 Q. B. 383.

Cases cited in the judgment: Ipswich Tailors' case, 11 Rep. 53, a.; Case of Monopolies, 11 Rep. 84, b., 87, b. *Wood v. Searl*, J. Bridgm. 139; Stationers' Company v. Salisbury, Comb. 221; *Rex v. Wright*, 3 B. & Ad. 681; *Rex v. Lloyd*, 1 Campb. 260; *Cobbold v. Chilvers*, 2 M. & G. 62.

#### FALSE IMPRISONMENT.

*Notice of action*.—A notice of action to justices, under the 24 G. 2, c. 44, stated the cause of action thus:—"For that you, on the 10th day of May, 1844, with force and arms, caused an assault to be made upon me, and then caused me to be beaten, &c., and to be forced and compelled to go along divers public streets and roads, &c., to a certain prison, to wit, at Louth, in, &c., and to be unlawfully imprisoned and kept in prison there for forty days then next following," &c. At the trial the proof was confined to the imprisonment in the gaol at Louth, under an invalid warrant of the defendants: *Held*, that the notice sufficiently stated the place of the injury, so as to enable the plaintiff to recover in respect of such imprisonment. *Jacklin v. Fytche*, 14 M. & W. 381.

Cases cited in the judgment: *Martins v. Upcher*, 3 Q. B. 662; 2 G. & D. 716; *Breese v. Jordan*, 4 Q. B. 585; 2 G. & D. 720, n.

#### FOREIGN OFFENCE.

See *Habeas Corpus*.

#### GUARDIAN.

See *Infant*.

#### HABEAS CORPUS.

1 *Foreign offence*.—Under the Convention Act, 6 & 7 Vict. c. 75, for committing and delivering up to justice, on requisition by an agent of the King of the French, persons accused of certain crimes done in France, a warrant to detain a party so accused "until he shall be discharged by due course of law," is insufficient; and the party imprisoned under it is entitled to his discharge on *habeas corpus*.

The *habeas corpus* for that purpose is claimable at common law.

On *habeas corpus*, and motion to discharge from such imprisonment for an offence committed abroad, the warrant being defective, the court (assuming that they could look into

the depositions referred to by the warrant) cannot on their own authority remand the prisoner as a person charged with a crime. *Besset ex parte*, 6 Q. B. 481.

2. *Commitment*.—The return to a writ of *habeas corpus* stated, that, on the 8th of April, 1844, the prisoner was committed by a warrant of commitment, under the hand and seal of H. B., a justice, &c., dated the said 8th day of April. The return then set out the commitment, reciting a conviction for an offence against stat. 3 G. 4, c. 34, s. 3, which was bad on the face of it, and then went on to allege, that afterwards and whilst the prisoner was so in custody, the same justice caused to be delivered to the gaoler another warrant of commitment, setting it out at length, by which it appeared that the prisoner was committed by the same justice on the same day and for the same offence. *Held*, that the second warrant of commitment being valid, the prisoner was not entitled to his discharge. *Reg. v. Richards*, 1 D. & M. 777.

#### HIGHWAY.

1. *Order of justices*.—"Side of the highway."—The 5 & 6 W. 4, c. 50, s. 65, enacts, that if the surveyor shall think that any carriage-way is prejudiced by the shade of any hedges or by any trees, except trees planted for ornament, &c., and that the sun and wind are excluded from such highway to the damage thereof, or if any obstruction is caused in any carriage-way by any hedge or tree, the owner of the land on which the hedge, &c, grows, next adjoining to such carriage-way, on the surveyor's information, may be summoned before a special session, to show cause why the hedges are not cut, pruned or plashed, or such trees not pruned or lopped, in such manner that the carriage-way shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded from such carriage-way to the damage thereof, or why the obstruction caused in such carriage-way should not be removed; and if the justices shall order that such hedges shall be cut, pruned, or plashed, or such trees pruned, &c., in manner aforesaid, or such obstruction removed, the owner shall comply within ten days after the service of the order, and in default thereof shall be subject to a penalty; and the surveyor, if the order be not complied with, is authorized and required to cut, prune, or plash such hedges; and to prune, &c., such trees, for the benefit of the highway, and to remove such obstruction, to the best of his judgment, and according to the true intent of the act. By sec. 105, any person thinking himself aggrieved may appeal to the quarter sessions, first giving notice of appeal within 14 days after cause of complaint.

At a special sessions for the highways, an order was made, reciting a complaint by the surveyor, that the owner had neglected to cut, prune, or plash certain hedges and trees upon his farm, on the right-hand side of a certain carriage way, situate, &c., whereby the sun and

wind were excluded from the said carriage way, to the damage thereof, and whereby also obstructions were caused in the same carriage way, contrary to the statute, &c.; and that the owner had appeared and the said offence proved; and the justices did thereby order the owner to cause the said hedges to be cut, &c., and the said trees pruned, &c., and the said obstructions complained of, to the injury or damage of the said highway, removed, within 10 days from service of the order. The owner cut away some part of the hedge, but the surveyor, considering the order not properly complied with, himself cut the hedge after the lapse of 10 days, the owner not having in the meantime appealed. Trespass being brought, the judge, at the trial, directed the jury that, although the plaintiff had not appealed, the surveyor was not justified, unless the order was valid : *Held*, that the direction was right.

The judge, at the trial, also directed the jury that the order was bad.

*Held*, that the statement, that the trees were on plaintiff's farm, and on the side of the road, was equivalent to a statement that he was the owner of the land next adjoining the road, so that the order was not bad altogether for omitting to show that fact.

*Held*, also, that the exclusion of sun and wind being one of the injuries complained of, the order was bad in part, as not stating the extent to which the cutting, &c., should take place with reference to that injury. *Seemle*, that a direction to cut, &c., so as to prevent the sun and wind from being excluded, would have been sufficient, without any more precise order as to the extent of the cutting.

*Held*, also, that the order was bad as to trees, for not showing that they were not planted for ornament, &c. But *held*, also, that it sufficiently appeared by the order, that there was a complaint of actual obstruction to the highway by hedges and trees which required cutting, &c., and a direction to remove that obstruction; wherefore, as the surveyors had lawful authority for part of the trespasses for which the damages were given, a *venire de novo* must be awarded. *Jenney v. Brook*, 6 Q. B. 323.

2. Under the Highway Act, (stat. 5 & 6 W. 4, c. 50, s. 73,) (which enacts, that if any timber, &c., is laid upon any highway so as to be a nuisance, and shall not after notice be removed, it shall be lawful for the surveyor, by order in writing from a justice to remove the timber, &c.,) an order of a justice, reciting that the plaintiff's timber was laid on the highway, and directing its removal, is conclusive to show that the *locus in quo* was a highway, so that the plaintiff, in an action of trespass against the justice who made the order, cannot dispute his jurisdiction on the ground that the *locus in quo* was not a highway. *Mould v. Williams*, 1 D. & M. 631.

Case cited in the judgment: *Brittain v. Kinaird*, 1 B. & B. 432.

#### HORSE-RACE.

*Lottery*.—In an action for money had and

received, the defendant pleaded, that a horse-race being about to be run, the plaintiff and one hundred and fifty-four other persons subscribed 1*l.* a piece, which was deposited with the defendant on the terms that the name of each subscriber should be written on a card, and the name of each of the horses written on another, and then the two sets of cards placed respectively in a box, and the cards should be drawn by chance from each of the boxes, and the person whose name should be drawn next after the name of the winning horse, should be entitled to receive 100*l.* from the entire fund. *Held*, an illegal lottery within 10 & 11 W. 3, c. 17, and 42 G. 3, c. 119, and therefore, that the plaintiff, who was the winner, could not recover the amount from the stakeholder; also, that if not an illegal lottery, it was an illegal bet; also, that the plea did not amount to the general issue, but was a good plea in confession and avoidance. *Allport v. Nutt*, 3 D. & L. 233.

#### INCLOSURE.

*Way-leave to carry minerals*.—An act of parliament for inclosing the moors and commons within the manor of Lanchester, in the county of Durham, contained a saving of all the seignioral rights of the Bishop of Durham as lord of the manor, and also provided, that the bishop and his successors, and their lessees and assigns, should at all times thereafter work and enjoy all mines and quarries lying under the said moors and commons, together with all convenient and necessary ways and way-leaves over the same, and full and free liberty of making and using any new roads or waggow-ways over the same, and for that purpose to remove obstructions, &c., and of winning and working the said mines and quarries belonging to the see and bishopric of Durham, wheresoever the same should be, and of leading and carrying away all the coals, minerals, &c., to be gotten thereout, or out of any other lands and grounds whatsoever, &c. : *Held*, that this clause entitled the bishop to carry over the lands inclosed under the act, not only coals and minerals got within or under those lands, but also those got out of any other mines belonging to the see of Durham; but not to carry coals, &c., got out of other mines worked by the bishop, but not belonging to the see.

*Held*, also, that an allegation, that a certain colliery was within and parcel of the manor, was not a sufficient allegation that it was a colliery belonging to the see. *Midgley v. Richardson*, 14 M. & W. 595.

#### INCOME TAX.

To covenant for rent, the defendant pleaded as to 2*l.* 0*s.* 10*d.* parcel, &c., that before any part of the rent became due, to wit, on &c., a large sum of money, to wit, 2*l.* 0*s.* 10*d.*, "being at and after the rate of 7*d.* for every 20*s.* of the annual value, to wit, 70*l.* of the said messuage," &c., was duly, and according to the form of the statute in such cases made and assessed on the said messuages, &c., in respect of the property thereof, for the year then next ensuing;" and

that the defendant then being the occupier and tenant thereof, paid that sum to the collector; and that the defendant had never since made any payment to the plaintiff on account of the said rent: *Held*, on general demurrer, that this was a good plea under the Income Tax Act, 5 & 6 Vict. c. 35.

The defendant also pleaded as to 52l. Os. 10d. parcel, &c., that the plaintiff himself held under a lease, with a clause of re-entry in case of breach; that he committed a breach; that "by reason and in consequence of the said forfeiture," John Doe brought his action on the demise of the superior landlord, the date of which was laid on the day of the forfeiture and before the rent accrued due; that judgment was recovered, and notice thereof given to the defendant, who was compelled to pay the rent to the superior landlord: *Held*, on special demurrer, that the plea was good; it not being alleged as a ground of demurrer, that it was not shown that the ejectment proceeded on the ground of the forfeiture.

*Quære*, even if it had been alleged, would not the plea have been good? *Franklin v. Carter*, 3 D. & L. 213.

#### INFANT.

**Testamentary Guardians.—Forcible removal.** Where two persons are appointed joint testamentary guardians of an infant, under 12 Car. 2, c. 24, s. 8, trespass lies by one of them against the other, for forcibly removing the infant from the lawful service of the former, against his consent. *Gilbert v. Schwenck*, 14 M. & W. 488.

Cases cited in the judgment: *Duke of Beaufort v. Berty*, 1 P. Wms. 703; *Frederick v. Frederick*, ib. 721.

#### INSOLVENT.

1. By the 5 & 6 Vict. c. 116, s. 1, any person, not being a trader, upon giving notice in the London Gazette, may present a petition for protection from process, to the Court of Bankruptcy, containing certain matters; and a commissioner may thereupon give such protection to the petitioner; and upon the presentation of such petition, the petitioner's estate is to vest in the official assignee nominated by the commissioner acting in the matter of such petition.

By sect. 4, after certain preliminary proceedings, the commissioner may make a special order for the protection of the petitioner from all process, and for the vesting of his estate in an official assignee, to be named by such commissioner, together with an assignee to be chosen by the creditors.

By sect. 10, if any action is brought against any petitioner in respect of a debt contracted before the date of the petition, "it shall be a sufficient plea in bar of such action, that such petition was duly presented, and a final order for protection and distribution made by a commissioner duly authorised; whereof the production of the order signed by the commissioner, with proof of his hand-writing, shall be sufficient evidence."

*Held*, that a plea framed upon that statute was properly pleaded in bar of the further maintenance of the action, where it showed that the defendant presented a petition before, and that a final order was made after action brought.

*Semble*, that such plea need not state the insertion of the notice in the Gazette. Or, the particulars of the petition; or, that an insertion order was made.

But *Semble*, that it should state that the final order was made either for the protection of the petitioner and the distribution of his estate, (within the terms of the tenth section,) or for his protection and the vesting of his estate in the official assignee and the creditors' assignee, (within the terms of the fourth section). *Nicholls v. Payne*, 7 M. & G. 927.

2. **Protection.**—Trespass will not lie against a plaintiff or his attorney for suing out execution, and arresting thereon a defendant who has obtained an order for protection from process under the 5 & 6 Vict. c. 116. *Yearsley v. Heane*, 3 D. & L. 265.

Case cited in the judgment: *Lloyd v. Wood*, 5 A. & E. 228, S. C. 6 N. & M. 822.

3. A defendant who has obtained a final order for protection under 5 & 6 Vict. c. 116, s. 4, may, under sect. 10, plead generally his protection, without setting out all the facts required to exist in order to procure the order. *Cook v. Henson*, 3 D. & L. 177.

4. The plaintiff having obtained judgment against one F. in an action of assault and false imprisonment, sued out a *ca. sa.*, whereon F. was taken and committed to the Queen's Prison of which the defendant was the keeper. F. afterwards petitioned the Court of Bankruptcy for his discharge under 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, and, having obtained from the commissioner an order for his discharge, was, in obedience thereto, discharged by the defendant accordingly. The plaintiff brought an action against the defendant for an escape. *Held*, that whether this was or was not a debt from which the commissioner had power to discharge the prisoner, the defendant was protected, being bound to obey the order of the commissioners, who acted judicially in a matter over which he had jurisdiction.

*Semble*, that the judgment debt being in tort, and not in an action for the recovery of a debt, the commissioners had no power to order the prisoner to be discharged out of custody under the above acts of parliament. *Thomas v. Hudson*, 14 M. & W. 353.

5. **Schedule.—Protection.**—The defendant, an insolvent debtor, inserted the plaintiff as a creditor in his schedule, but by mistake and without fraud, stated the debt to be 3l., whereas in fact it was 7l.: *Held*, that inasmuch as the creditor was thus deprived of the benefit of the notice to be given to creditors for 5l. and upwards, under the 71st section of the Insolvent Debtors' Act, 1 & 2 Vict. c. 110, this was not a case within the protection of the 93rd section,

and the defendant's discharge under the act was no bar to an action for this debt. *Hoyles v. Blore*, 14 M. & W. 387.

Cases cited in the judgment: *Forman v. Drew*, 4 B. & C. 15; 6 D. & R. 75; *Wood v. Jewett*, 4 B. & C. 20.

#### INTERPLEADER.

1. The 1st section of the Interpleader Act does not apply to the case of a party sued by one person for the price of goods, and by another for the goods themselves. *Slaney v. Sidney*, 3 D. & L. 250.

Case cited in the judgment: *James v. Prichard*, 8 Dowl. 890, S. C. 7 M. & W. 216.

2. *Sheriff. — Possession-money.* — A sheriff having seized certain horses which were claimed by a third party, an interpleader order was made, that on payment of a sum of money into court, and "possession-money" from the date of the order, the sheriff should withdraw from possession: *Held*, that the sheriff had no right to detain the horses for the expenses of their keep; but should have applied to the judge to allow those expenses. *Gaskell v. Sefton*, 3 D. & L. 267.

#### JUSTICES' CLERKS' FEES.

Fees which a justices' clerk, in a borough, is authorised to take by a table regularly allowed and confirmed under 5 & 6 W. 4, c. 76, s. 124, in respect of charges against persons apprehended and brought before the borough justices by constables appointed by the watch committee, disposed of by such justices, and which fees the clerk to the justices cannot recover from such persons or other parties, either on account of their not being specifically imposed on them by acts of parliament, or from their inability to pay, are "expenses necessarily incurred in carrying into effect the provisions of the act" under sect. 92, and a mandamus will go to direct their payment out of the borough fund. *Reg. v. Gloucester, Mayor of*, 1 D. & M. 677.

#### LEGACY DUTY.

A testator bequeathed to trustees a sum in the 3 per cent. consols, in trust, as to 1,700*l.*, part thereof, to pay and apply the dividends in establishing and supporting a daily school at N., for the instruction of 20 boys, on the principle of a national school; the dividends to be retained by R. B., sen., and R. B., jun., (two of the trustees,) to be so applied: and he directed that R. B., jun., should be the schoolmaster, and that the management of the school should always remain in the family of R. B. And as to 400*l.*, or part of the said stock, the testator directed that the dividends should be paid by the trustees to and applied by the schoolmaster for the time being of the said school, in providing the boys with pinafores, caps, and shoes, and also with books and slates, such clothes, books, and slates to be left behind them on leaving the school: *Held*, that these bequests were subject to legacy duty. *Griffiths, in re*, 14 M. & W. 510.

Cases cited in the judgment: *In re Wilkinson*, 1 C. M. & R. 142; *Ex parte Franklin*, 3 Y. & J. 544; 3 Sim. 147; *Attorney-General v. Nash*, 1 M. & W. 237; *Attorney-General v. Fitzgerald*, 13 Sim. 83.

#### LIMITATION.

Statute 3 & 4 W. 4, c. 27. s. 7, which enacts, "that when any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent as tenant at will, the right of the person entitled subject thereto, and of the person through whom he claims to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have first determined," does not apply where the tenancy at will was determined before the passing of the act. *Doe d. Evans v. Page*, 1 D. & M. 601.

#### LOTTERY.

See *Horse-race*.

#### MANDAMUS.

See *Corporation; Repair of Road*.

#### NOTICE OF ACTION.

See *False Imprisonment*.

#### PATENT.

*Extension of time. — Pleading.* — Original letters patent, for a term of 14 years, were dated the 26th of February, 1825, and renewed letters patent were on the 26th of February, 1839: *Held*, that the day of the date must be reckoned inclusively, and that the former term expired on the 25th of February, 1839, and consequently the renewed letters patent were granted after the original letters patent had expired.

Renewed letters patent, granted under 5 & 6 W. 4, c. 83, s. 4, are not void if dated after the expiration of the term for which the original letters patent were granted, but may be granted by the crown after the expiration of that term, provided the preliminary steps which the fourth section of the act requires to be taken by the patentees were complied with before that term ended.

But compliance with that condition, it being introduced in the fourth section in the form of a proviso, need not be averred by the plaintiff in his declaration, but non-compliance with it should be pleaded by the defendant. Parties, however, who use the invention in the interval are not responsible.

Renewed letters patent were granted to the plaintiff "upon his securing to C. W., (the original inventor,) an annuity of 500*l.*, so long as the letters patent should last." *Held*, that the meaning of this condition was, that a security should be given to C. W. for the annuity, but that whether it was given before or after the letters patent was immaterial; and that an averment, that the annuity was at the date of the new letters patent secured, was supported

by proof of a deed to secure the annuity, executed before the new letters patent were granted.

The power of renewal is not confined to grantees, but extends to assignees, of letters patent; and such renewed letters patent granted to the assignees are good by the stat. 5 & 6 W. 4, c. 83, independently of the 7 & 8 Vict. c. 69. *Russell v. Leddam*, 14 M. & W. 574.

Cases cited in the judgment: *Russell v. Cowley*, 1 C., M., & R. 868-871; *Webb v. Fairmanor*, 3 M. & W. 473; *Young v. Higgon*, 6 M. & W. 49; *Spilsbury v. Clough*, 2 G. & D. 17; 2 Q. B. 466; *Dore v. Gray*, 2 T. R. 365.

2. *Inrolment of specification.*—*Material traverse.*—*Pleading.*—In case of an infringement of a patent, the defendant pleaded, that the invention in respect whereof the letters patent were granted, was an invention stated, &c., represented by the plaintiff, in applying for the letters-patent, to be, and was therein called and intitled “The invention of making or paving public streets and highways, and public and private roads, courts, and bridges with timber or wooden blocks;” that the letters patent were granted for and in respect of the said invention, by and under the name, style, and title of “The invention of making or paving public streets and highways, and public and private roads, courts, and bridges with timber or wooden blocks;” and by and under no other name, style, or title; and that the said style and title was, in its claim, description, and definition of the said invention, too large, uncertain, ambiguous, and vague, and inconsistent, inapplicable, and at variance in respect of, to, and with the nature of the said invention as described and ascertained by the specification; by reason whereof the patent was void. The plaintiff replied, that the said letters patent were granted for and in respect of a certain invention called and intitled, “An invention of making or paving public streets and highways, and public and private roads, courts, and bridges, with timber and wooden blocks,” and not for “The invention of making or paving public streets and highways, and public and private roads, courts, and bridges, with timber or wooden blocks.” *Held*, that this was an apt traverse of the plea.

By an act of parliament, (local and personal, 4 & 5 Vict. c. xci., but to be judicially taken notice of as a public act,) reciting, that letters patent had been granted to A.; that the specification was inrolled within six months, instead of being inrolled within four months after the date thereof, as required by the letters patent; that the letters patent contained a proviso for making them void, if they should become vested in, or in trust for, more than twelve persons; and that certain persons had agreed to form themselves into a company for the purpose of working the patent; powers were given for the formation of a company, and enabling the patentee to assign the patent to them, or to license them to work it. A subsequent section, reciting the non-inrolment of a specification within due time, and that such non-inrolment

had arisen from inadvertence and misinformation, and that it was expedient that the patent should be rendered valid to the extent therein-after mentioned, enacted, that the letters patent should, during the remainder of the term, be considered, deemed, and taken to be as valid and effectual to all intents and purposes as if the specification thereunder, so inrolled by A. within six months after the date thereof, had been inrolled within four months. *Held*, that the confirmation of the patent was unconditional, and was not dependent on the formation of a company. The defendant further pleaded, that, before the passing of the act, and after the expiration of four calendar months next and immediately after the date of the plaintiff's patent, he obtained a patent for an invention of certain improvements in paving for covering streets, roads, and other ways; that his invention then applied to blocks of wood, and was a *bona fide* improvement of and upon the invention of the plaintiff; that the same could not be made, used, or exercised without at the same time making, using, and putting in practice the plaintiff's invention; and that, in the due and legitimate exercise and enjoyment of his patent, he necessarily and unavoidably used the plaintiff's invention. *Held*, bad on demurrer; the operation of the statute being to effect a complete confirmation of the plaintiff's patent, and to preclude the defendant from using the plaintiff's invention, notwithstanding the grant to the defendant. *Stead v. Carey*, 1 C. B. 496. See *Stocker v. Warner*, 1 C. B. 148.

#### REPAIR OF BRIDGE.

*Frivolous defence.*—*Costs.*—Stat. 13 G. 3, c. 78, s. 64, empowered the court trying an indictment for non-repair of a highway to award costs if the defence was frivolous. Stat. 43 G. 3, c. 59, s. 1, enacts that all “matters and things in the said act contained, relating to highways,” shall, so far as applicable, be extended and applied to county bridges “as fully and effectually as if the same and every part thereof were herein repeated and re-enacted.”

*Held*, that the clause as to costs in stat. 13 G. 3, c. 78, was substantively re-enacted in stat. 43 G. 3, c. 59, with reference to county bridges, and therefore was not repealed when stat. 5 & 6 W. 4, c. 50, repealed in general terms stat. 13 G. 3, c. 78.

The judge who tries an indictment for non-repair of a bridge, removed by certiorari, may certify after the assizes, that the defence was frivolous, and by such certificate award payment of costs to the prosecutor, which will be enforced by the court in banc. *Reg. v. Inhabitants of Merionethshire*, 6 Q. B. 343.

#### REPAIRS OF ROAD.

*Mandamus.*—*Costs.*—Where a judge of assize, after trial of an indictment for non-repair of a road under stat. 5 & 6 W. 4, c. 50, s. 95, makes an order that the costs be paid by the parish, but does not insert the amount of costs in the order, nor ascertain and fix the amount either there or at any subsequent time, this



court will not enforce such an order by a mandamus. *Reg. v. Clark*, 1 D. & M. 687.

#### SEWER'S RATE.

A sewer's rate, not being imposed directly by act of parliament, is not a "parliamentary tax." *Palmer v. Earith*, 14 M. & W. 428.

Cases cited in the judgment: *Brewster v. Kitcheb*, 2 Salk. 616; *Waller v. Andrews*, 3 M. & W. 312.

#### STAMP.

**Annuity.—Memorial.—Pleading.—Amendment.**—In replevin, the defendants avowed for a distress under an annuity deed; which recited, that F., who was the beneficial lessee of certain salt-works, in order to raise money for carrying them on, had contracted with K. to grant him an annuity of 1,050*l.* in consideration of 14,500*l.*, and that K., being unable to provide the whole sum himself, had entered into sub-contracts with seven other persons to take portions of the annuity, each advancing part of the consideration money; and, after reciting all these contracts, and the payment by the different parties of their respective portions of the 14,500*l.*, the deed contained a grant by F. to C. and D. of eight several annuities, making together an annuity of 1,050*l.*, in trust for the several persons advancing the money, with the usual powers of distress. The avowry then set out two other deeds, by one of which C., and by the other of which S., a trustee nominated in D.'s place under the 1 W. 4, c. 60, assigned "the said several annuities" to the defendants, who then avowed the taking for a distress in respect of one of the annuities in arrear. There were similar avowries for arrears of others of the annuities. The plaintiff pleaded in bar,—1st, *non est factum*; 2ndly, that C. did not assign "the said annuities" *modo et formâ*; 3rdly, that D. was not a trustee within the 1 W. 4, c. 60; thus, that S. did not assign the annuity *modo et formâ*, and lastly, (after cravingoyer of the annuity deed,) that no memorial was duly enrolled. The defendants joined issue on the first four pleas, and to the fifth replied, that the memorial was duly enrolled; setting it out. The plaintiff rejoined, that the memorial contained certain untrue statements as to the parties beneficially interested, and the pecuniary considerations for the annuities. The defendants sur-rejoined, that the memorial did truly state the names of the persons by whom the annuities were to be received, and the pecuniary considerations for granting the same; on which issue was joined: *Held*, 1st, that the annuity deed only required a stamp in respect of the aggregate sum paid to F. for the annuity of 1,050*l.* and that it need not be the aggregate of the stamps required on each of the several annuities into which it was divided; 2ndly, that if there was a variance in stating in the avowries, that C. and S. assigned "the said annuity" to the defendants, whereas the legal effect of each of the assignments was to convey a moiety only, this was a defect which ought to be amended at *nisi prius*.

The memorial, in the column headed "Con-

sideration, and how paid," first set forth the sums paid by the several sub-purchasers to K. for their several annuities, and then stated the sums paid by K. to F., which it described as composed of 7,500*l.* paid by K. as the consideration for his own share of the annuity, and of the other sums paid to K. by the sub-purchasers as before mentioned. In the former part of the column there were some inaccuracies in the statement of the manner of payment, but the latter correctly stated the payments to F.: *Held*, that the memorial was sufficient.

*Semble*, that the *onus* of proof upon the issue relating to the memorial, was upon the plaintiff; for that the memorial would be taken to be correct till the contrary was shown. *Hogarth v. Penny*, 14 M. & W. 494.

#### TITHES.

1. *Issue by way of appeal.*—Where, in proceedings before a tithe commissioner under the 45th section of the 6 & 7 W. 4, c. 71, several modusses are set up in respect of distinct farms, and the annual value of the payment to be made in respect of each farm is less than 20*l.*, his decision was final, notwithstanding the whole is in the hands of the same proprietor, and the aggregate yearly value exceed 20*l.* *Tomlinson v. Boughey*, 1 C. B. 663.

2. *Composition.*—In 1711, *W. P.*, the lord of the manor and patron of the church of Aston-le-Walls, being seised in fee of certain lands lying dispersed in the common fields of Aston, and *J. W.* being rector of the said church, and in right thereof seised of other parcels of lands, also lying dispersed in the said common fields, (being the glebe lands belonging to the rectory,) and also of the tithes as well of the said common fields as of the demesne lands of the said *W. P.*, an agreement was made, on the 1st of March, 1711, under the hands and seals of the said *W. P.* and the said *J. W.*, by which it was agreed that the said *W. P.* should convey to the said *J. W.*, and his successors, for ever, an annuity of 40*l.*, to be charged on his manors and lands. And the said *J. W.* did thereby, for himself, and as far as in him lay, for his successors, covenant and agree with *W. P.*, and his heirs and assigns, that all those pieces of land reputed as the glebe lands should thenceforth be possessed and enjoyed by *W. P.* and his heirs for ever; and also that all the lands of which the said *W. P.* was owner in Aston, (including the lands the tithes of which were in question,) should be freed and charged from the payment of all manner of tithes, &c. Afterwards, on a petition to the ordinary, a commission was issued, under which it was certified to the ordinary that the exchange would not be prejudicial to the rector, and he granted his license for carrying it into effect. A bill in Chancery was afterwards filed by *W. P.* against *J. W.*, the rector, and the bishop, the ordinary, in which suit a decree was made, in Trinity Term, 1715, that the arrangement should be performed and the exchange confirmed. In pursuance of this agreement, *J. W.* took posses-

sion of the lands and enjoyed the same, and he and his successors received, as it became due, the annuity of 40*l.* so given in exchange for the glebe lands and as a composition for the said tithes, until June, 1831, when the plaintiff became rector, and the plaintiff himself received it until Michaelmas, 1832, but not since. No tithes had been taken from the lands of the said *W. P.*, so exempted from tithes by the agreement from the making thereof, and that agreement, at the time of the passing of the 2 & 3 *W. 4.*, c. 100, had not from the making thereof been set aside, abandoned, or departed from. The manor and all the lands of the said *W. P.* descended to one *E. P.* before and on the 10th of July, 1833, and so continued till his death in 1838, when they descended to one *W. H. F. P.*, the defendant. On the 7th June, 1833, a notice was served on certain occupiers, as well as *E. P.*, the owner of the lands in question, requiring the titles to be set out and paid in kind to the plaintiff, and on the 10th of July, 1833, a bill was filed in the exchequer in equity against the occupiers, praying for an account of the single value of the tithes, but no bill was then filed against *E. P.*, the owner of the lands; but by an order of the 15th of January, 1835, the bill was amended, and *E. P.* was made a party defendant thereto. The cause having been heard, the bill was dismissed against *E. P.*, but the court directed that the occupiers should account for the tithes. Against that decree the defendants, including *E. P.*, appealed to the House of Lords, and on the 6th February, 1840, the decree was reversed. Pending the appeal to the House of Lords, actions of debt were brought by the plaintiff against the same occupiers, under 2 & 3 *Edw. 6.*, to recover the treble value of the titles of the same lands which accrued subsequently to those sought to be recovered by the bill in equity, and in each action the plaintiff was held entitled to recover, and the treble value of the tithes was paid pursuant thereto.

A feigned issue having been brought under the 46th section of 6 & 7 *W. 4.*, c. 71, to try the validity of the decision of the assistant tithe commissioner, as to whether the above lands were free from tithes, and a special case having been brought for the opinion of this court, stating the above facts. *Held*, 1st, that the above agreement of 1711 was a valid composition for tithes within the meaning of the 2nd sect. of 2 & 3 *W. 4.*, c. 100. 2ndly, that the proceedings and suits which took place in 1833 and subsequently were not sufficient to take the cause out of the statute, the plaintiff not having commenced any suit or action against *E. P.* within one year from the passing of the act, within the meaning of the 3rd section. *Thorpe v. Plowden*, 14 *M. & W.* 520.

#### VOTING AT ELECTIONS.

By the 7 *W. 4.* and 1 *Vict. c.* 78, s. 45, voting papers for the election of aldermen must contain the "place of abode" of the person voted for: *Held*, that this requisite was not satisfied

by papers naming the house where the person voted for carried on the business of a bookseller, sleeping elsewhere.

This defect was not cured by the general provision of 5 & 6 *W. 4.*, c. 76, s. 142, that no inaccurate description in any voting paper "required by this act" shall hinder the full operation "of this act."

The defendant entered by indenture into partnership with *J. D.*, who was owner in fee of a house within a borough, in which it was agreed, that the business of bookselling was to be carried on by them jointly in the house, *J. D.* to require no rent for the parts of the house in which the business was carried on, and the fixtures in those parts to be joint property. The defendant and *J. D.* carried on the business in the house: *Semble*, that the defendant was an "occupier," and entitled to be a burgess within the 5 & 6 *W. 4.*, c. 76, s. 9. *Reg. v. Deighton*, 1 *D. & M.* 682.

#### WAGER.

A wager of less than 10*l.* on a foot race to be run for a sum under 10*l.*, before the statute 8 & 9 *Vict. c.* 108, s. 18, was legal and valid, and neither of the betters could recover back his stake from the stakeholder before the determination of the event. *Emery v. Richards*, 14 *M. & W.* 728.

#### WAY.

*See Inclosure.*

### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

#### Queen's Bench.

*Day v. Sharpe.* Easter Term, 1846.

RAILWAY.—SECRETARY.—ASSUMPSIT.

*A. and B. were provisional directors of a projected railway scheme, and A. was afterwards, with the consent of B. and the other directors, appointed secretary to the company, and B. attended meetings of the company whilst A. acted as secretary. The scheme was afterwards abandoned.*

*Held*, that *A. could maintain an action against B. for services rendered, and that B. by his own conduct was estopped from taking the objection that A. having been once jointly interested in the undertaking with him, could not divest himself of that liability so as to support the action.*

THIS was an action tried before Mr. Justice Coleridge, at the last spring assizes for the county of York, for work and labour, money paid, and an account stated. Plea non assumpsit. The plaintiff was secretary to a railway company, and the action was brought against the defendant, a member of the provisional committee, for the amount of salary which had been agreed to be given. In October last a railway scheme was projected, and both plaintiff and defendant were members of the provi-

sional committee. Prospectuses were issued containing the names of plaintiff and defendant as provisional directors. A meeting of the directors was afterwards held, at which it was thought necessary to appoint a secretary, and the plaintiff accordingly received the appointment. Prospectuses were afterwards issued, and several sent to the defendant containing the plaintiff's name as secretary, and omitting his name from the list of directors. The defendant attended several meetings at which the plaintiff acted as secretary. The plaintiff continued to act as secretary to the company till the scheme was abandoned. On this state of things the jury found a verdict for the plaintiff.

Mr. Baines now moved, in pursuance of leave reserved by the learned judge, to enter a nonsuit on the ground that both plaintiff and defendant being members of the same undertaking, that the plaintiff by becoming secretary could not so divest himself of his liability as to be able to sue a joint contractor. It is a well established rule of law that one member of a co-partnership cannot sue another; the only remedy is in a court of equity. In the *Kidwelly Canal Company v. Raby*,<sup>a</sup> it was held that one of several persons who had subscribed an agreement *inter se* to promote a joint undertaking could not withdraw his name and discharge himself from the engagement without the consent of the rest of the subscribers. And in *Parkin v. Fry*, it was held that a secretary could not maintain an action against one of the committee for services rendered in furtherance of the scheme. In *Holmes v. Higgins*,<sup>b</sup> it was held, that a surveyor who was a subscriber to a railway undertaking could not maintain an action for work done by him on account of the partnership, against all or any one of the other subscribers.

Lord Denman, C. J. This appears to me an arrangement made among the directors which is not in any way calculated to affect the rights of third parties. There is evidence to show that the defendant consented to the appointment of the plaintiff as secretary, and therefore he is not in a situation to take this objection.

Mr. Justice Patteson. I think the defendant treated the plaintiff as secretary to the company, and that he is estopped by his own conduct.

Mr. Justice Williams concurred.

Mr. Justice Coleridge. The defendant had not only consented to the appointment, but had attended meetings of the company after the plaintiff had been appointed secretary, and he therefore estopped himself from taking this objection.

Rule refused.

#### Court of Bankruptcy.

*Hambridge v. Kettle*. Sept. 13.

#### JURISDICTION UNDER THE SMALL DEBTS ACT.

*Where a creditor's name is not inserted in the insolvent's schedule, the debt is not barred by the final order.*

THE defendant, a clerk in a warehouse in the city, with a salary of 100*l.* per annum, was summoned before Mr. Commissioner *Holroyd*, under the Small Debts Act, (8 & 9 Vict. c. 127,) in respect of a judgment debt, arising upon an action on a bill of exchange for 15*l.* It appeared that the defendant had filed a petition in this court in the month of March last, under the stat. 7 & 8 Vict. c. 96, and obtained his final order; and upon the production of the schedule annexed to the petition so filed by the defendant, it appeared that the bill of exchange on which the plaintiff sued was described therein, and one of the indorsers was stated to be a creditor for the amount, but the present plaintiff's name was not mentioned in the schedule, although it was shown that the defendant had previously received notice that plaintiff was the holder of the bill, and had threatened to bring an action upon it.

It was now suggested on behalf of the defendant, that his person was protected in respect of the judgment on which the summons was founded, inasmuch as the debt was mentioned in his schedule, and that the court had no jurisdiction to enforce an order for payment under the Small Debts Act.

Mr. Commissioner *Holroyd* referred to the form of the final order prescribed by the statute 7 & 8 Vict. c. 96, schedule A. No. 3. The order expressly declared, that the petitioner was thereby to be protected in respect of the debts due at the time of filing his petition to the several persons named in his schedule as creditors, or claiming to be creditors, "and as to the claims of all other persons not known to the said petitioner at the time of making this order, who may be indorsers or holders of any negotiable security set forth in his said schedule." Here the plaintiff *Hambridge* was the holder of a negotiable security within the knowledge of the petitioner, nevertheless his name did not appear in the insolvent's schedule, and his claim was not barred by the final order. His Honour therefore directed that the defendant should pay the plaintiff's debt by instalments of 1*l.* 10*s.* per month, or that in default a warrant should issue for his commitment to prison for forty days.

#### THE EDITOR'S LETTER BOX.

The letter from our Old Correspondent at Exeter on Ecclesiastical Courts, shall be inserted.

The "Law Promotions and Appointments," referred to in the contents of the number for 19th September, were obliged to be deferred to the 26th. They will be found at p. 520, instead of 496.

C. H. E., whose articles will expire on the 27th January, may be examined and admitted in Hilary Term.

D. W.'s letter shall be inserted.

<sup>a</sup> 2 Price, 93.

<sup>b</sup> 1 Barn. & Cress. 74.

# The Legal Observer.

SATURDAY, OCTOBER 10, 1846.

———"Quod magis ad nos  
Pertinet, et noscire malum est, agitamus."

HORAT.

## STATE OF THE PROFESSION.

### CAUSES OF THE DISUNION OF LAWYERS.— OBJECTS AND PROGRESS OF LAW SO- CETIES.

In a recent instance with regard to the Small-Debts Act, as on many other occasions, we have given expression to the observations of numerous correspondents who complain of the inertness of the profession in maintaining its station and just interests. In our humble vocation, we have often exhorted our brethren to unite their efforts in resisting the encroachments to which they are constantly subjected, either from the inconsiderate and oftentimes the wild measures of our modern Law Reformers, or from the vulgar prejudices which too often prevail against lawyers, under the ignorant notion that whatever restrains their practice, or diminishes their emoluments, is consistent with justice and the public interest.

Those who, like ourselves, are called upon, equally by duty and inclination, to watch the state and progress of events, as they affect the substantial welfare of the profession at large, cannot fail to have perceived many causes at work, especially of late, materially calculated to disunite its members and retard the improvements which might otherwise be effected. We shall endeavour to place before our brethren several of the causes, which, in our opinion, account for the Disunion of Lawyers in general, and we trust that some benefit may result from calling attention thereto, and that ultimately a portion at least of the grievance may be abated and a better state of things introduced.

Our readers are well aware that lawyers are zealously opposed to each other on be-

half of their respective clients, in matters which stir up considerable warmth of feeling. Although with some men this is not carried beyond the immediate occasion which gives rise to it, with others it produces a more permanent feeling of opposition, and prevents that union of purpose which is essential to effect any important professional object.

They are not only thus placed in constant collision with each other in business of a personal nature, but there also prevails a general rivalry in the struggle for professional success. Without supposing that one man looks on the prosperity of another with any continued feeling of envy, it is not unreasonable to conjecture that, as the great prizes in the profession are exceedingly few, and the moderate ones not vastly numerous, the unsuccessful are tempted to view their fortunate competitors with no high degree of cordiality and are not much inclined to co-operate with them in measures from which they derive comparatively little personal advantage. Thus it is evidently difficult in the very outset to effect any hearty union amongst individuals, necessarily placed in a state of almost continual opposition.

There are obviously various causes which produce a diversity of opinion amongst members of the profession. No two men think alike, and lawyers, whose vocation it is to find out differences and to raise objections, may be naturally expected, more than any other class, to take different views of the same subject.

Although they may be unanimous in wishing well to their profession, they are not remarkable for any active display of the *esprit-de-corps*, and whilst there is a passive feeling in favour of the general interests of the profession and the necessity

of upholding its character and respectability, they too often content themselves with a bare expression of opinion, and take no personal interest in any steps for promoting the general good.

The profession in truth is not agreed on the precise ends they wish to be attained. One class honourably and unselfishly aims only at raising the *general status* of the profession in public esteem, and is indifferent to pecuniary considerations. Towards effecting this paramount object, some very strongly recommend the improvement of professional *education*, and many benevolent persons would add an *asylum* or establishment for the aged, infirm, and unfortunate members of the profession.

Others encourage principally such measures as may lead to the *personal honour* of such members of the profession as possess influence in high quarters, through which they may be appointed to offices of distinction. The attainment of this object, though beneficial only to a few, is no doubt calculated to reflect credit on the body from which the individuals are chosen.

The larger number, who consider that the profession is already sufficiently honourable, look mainly at the preservation or increase of its *emoluments*, the extension of the business of practitioners, and the restraint or punishment of the encroachments of unqualified persons.

Thus there are divers objects to be attained, ardently supported by some, but viewed with indifference by many, and with hostility by others. And then the *means* by which all or any of these *ends* may be obtained, are the subjects of an infinite contrariety of opinions.

Unfortunately, also, there has arisen an impression that the views and interests of the *town* and *country* members of the profession materially differ from each other, and that in some respects they are of a conflicting nature. This feeling has improperly been excited or increased by some writers in recent periodical publications. We are well assured that these writers are ignorant of the true interests of the profession. We apprehend that they are for the most part actuated by disappointed feelings, occasioned by want of success either in their professional objects or in the position they occupy in the estimation of their brethren.

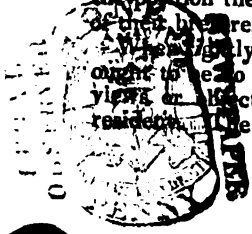
When fully understood, we think there ought to be no material difference in the views or objects of lawyers, wheresoever resident. The London agents who consti-

tute nearly one-third of the London profession, and include many of the largest and most influential offices, must necessarily feel the strongest interest in the welfare of their country brethren. In the professional measures which are discussed in town, their effect on the Country practitioners ought never to be lost sight of, and if this has ever been the case, it must have arisen from a want of that mutual good understanding for which we are contending.

It is indeed within the recollection of many old practitioners, that at one time there was an unfriendly feeling between the attorneys practising in the city and those at the west end of the town. Even recently, but especially some years ago, there existed a system of "sharp-practice" and constant hostility between rival offices, which is now, except in rare instances, altogether at an end. In like manner, whatever feeling there may be of supposed conflicting interest between town and country attorneys, we trust a better knowledge of each other will speedily remove the erroneous impression.

On some important questions, such as the General Registry of Deeds, it has been supposed that the adoption of the proposed changes would promote the convenience and interest of London solicitors more than those of the Country. But this could only be the case to a comparatively small extent, which we are sure would be far outweighed by other considerations. Indeed, the interest of the bulk of the profession in all parts of the kingdom, we are persuaded, is invariably identical. Then, on the other hand, while the scheme of the Local Courts has been generally opposed in London, it has in many parts of the country been favoured; but this apparent opposition has generally arisen from the want of a clear explanation of the objects to be attained, and the modifications by which the measure might have been accompanied. A due communication of the views of each party, and a better understanding of the interests of each, would doubtless have led to a satisfactory arrangement, and promoted the true interests of all classes of practitioners, whilst the due and effectual administration of justice would have been better secured.

Our readers are aware, that in order to promote the improvement of the profession,—to encourage fair and honourable practice,—to prevent or punish instances of fraud or mal-practice—and generally to



advance the respectability and raise the character of professional men, various Societies have been established; some in the metropolis and others in the large towns throughout the kingdom. In London they have all merged into "The Incorporated Law Society." In the country there are not only many active and efficient societies, but they have most of them united into a general body, called "The Provincial Law Societies' Association." Thus there appear at the present time to be ample means for duly considering and promoting the real interests of the profession, but we are well aware that neither the committee of the Metropolitan nor of the Provincial Societies have met with the unanimous approbation of their brethren at large.

Seeing the diversity of opinion to which we have adverted, we cannot expect more than a general concurrence in any measures for the furtherance of the interests of the profession. Therefore we are not surprised that in canvassing the labours of these committees, occasional dissent should be expressed;—that sometimes it should be objected that too much has been done;—sometimes too little;—and at others that a different course should have been pursued. Still it is matter of much regret that the well-meant and disinterested services of these committees should be so much depreciated as they have been on many occasions. Without offering any suggestions or giving any assistance when the interests of the profession are assailed, these Dissentients remain inert until the fit time has passed; and then they pour out their censures on whatever may have been attempted, done, or omitted.

Amongst those who express their dissatisfaction at the present state of the several law societies, and who charge them with supineness, there are many who belong to none of them, and others who, although they are members, take no part in professional affairs, except in exercising the Englishman's privilege of grumbling. Now we venture to say, that if those who are not members would enrol themselves in one or other of these associations; and if those who have already joined them would take a timely interest in their management, all that can reasonably be expected would be attained.

There are nearly 10,000 attorneys and solicitors in England and Wales. Of the London attorneys we understand that nearly one-third are members of the Incorporated Law Society. Large as this

number is, we would ask why should not one member at least of every firm join the body? Of the country attorneys, from all the information we have collected, we believe that not more than one-sixth at the most are members of any law association whatever. Surely this is not as it ought to be.

Whilst those who belong not to any of the existing societies, indulge in angry invectives against their negligence, and seek to excuse or justify their own refusal to join them; it also too often occurs that many of the members themselves, ignorant of what may have been done, and without enquiring the reasons against attempting what they suppose to be desirable, are nevertheless profuse in their censures of the governing body whom they have themselves elected. It happens also, we fear, that the committee or council of twelve or twenty-four, or whatever may be the constituted number,—however popular may be the mode of election,—consist in part or members of the profession whom some of their compeers deem not so well entitled as themselves to hold a high place in the professional conclave. Some men acquire a large share of practice, but are not selected for the posts of honour and confidence which others attain. They are dissatisfied, and unhappily this jealousy will always in some degree exist. Hence arise heart-burnings and unfavourable constructions, to the prejudice of the general objects for which such societies are established.

In the progress of these societies, it is observable also that some active and ambitious persons, disappointed perhaps in attaining their objects, or it may be sincerely believing that something better may be effected under more energetic management, have projected other associations. In so large a body as the attorneys and solicitors there will always be found a considerable number who from one motive or another will for a time at least encourage any new effort for professional advantage either real or supposed;—And seeing how much the interests of the profession stand in need of support, we are not disposed to regret that such experiments for the general good should be fairly tried.

It has been said that these co-existing societies are not to be viewed as *rivals*, but as *auxiliaries*, working for the same useful purpose. We incline to think, however, from some experience of the

effects of such separate yet contemporaneous establishments that the result is not really beneficial. A small and active body conducting its proceedings in concert with the main association might possibly, on some occasions, promote the general object; but hitherto we have not seen any well-considered plan for effecting such an arrangement. The only course that seems to be feasible is the extension of the existing societies, so as to comprehend the profession at large, and then to devise a plan for conducting the affairs by the aid of separate committees on the different subjects of professional interest. Such committees should however communicate with the general council, and thus secure the advantage, on the one hand, of the fullest information and the most deliberate judgment; and on the other, of the weight of a large and influential body to carry the proposition into effect.

We have hitherto spoken of the causes of disunion amongst the attorneys and solicitors, but it has always been our course to view the profession as a *whole*, composed of two branches or grades—the barrister and the attorney; and to consider the interests of both as identical. It is indeed quite marvellous that these two great divisions of the profession should not recognize a clear community of interest. They are all lawyers, as in the church the members, of whatever grade, are all clergymen. The dignitaries and all the members of the higher grades of each profession are concerned in maintaining the usefulness, the learning, the station and character of the general body, whether archbishop or chancellor, bishop or judge, dean or serjeant,—rector and curate or barrister and attorney. They should all join heart and hand in upholding the character and promoting the improvement and the just interests of every branch of their eminently useful and highly honourable professions.

#### OPERATION OF THE STAMP ACTS.

##### UNSTAMPED BILL PURPORTING TO BE DRAWN ABROAD.

A CASE in the Court of Common Pleas, lately reported, \* suggests the necessity of increased caution in negotiating bills of exchange purporting to be drawn in foreign countries. The facts were as follow:—

\* *Steadman v. Duhamel*, 1 Com. Bench R. 889.

The plaintiff, Steadman, became indorsee for value of a bill for 58*l.*, payable in London, but written in the French language, and dated at Vichy, a town in France. The bill not having been paid at maturity, the indorsee brought his action against the acceptor, Duhamel; and upon the production of the bill, which was not stamped, it was objected to, and to support the objection evidence was given, that though purporting to be a foreign bill it was really drawn in London. It further appeared, that the bill was drawn in the form of a foreign bill, at the express suggestion of the defendant, and that the plaintiff, when he took the bill, had no reason to suppose it was other than it appeared upon the face of it to be. Lord Denman, who tried the cause on circuit, allowed the bill, under the circumstances, to be read in evidence, reserving leave, however, to move to enter a nonsuit, if the court should be of opinion that the defendant was not estopped from raising the objection that the bill was unstamped.

In arguing the case in the court above, the plaintiff's counsel relied mainly on the ground, that the defendant having allowed the bill to go into circulation as a foreign bill, ought not to be permitted to set up his own fraud as an answer, to an innocent holder who received the bill *bona fide* and without notice of any irregularity. Several authorities were cited as expounding the rule of law laid down by the Queen's Bench in *Pickard v. Sears* <sup>b</sup> "that where one by his words or conduct, wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the latter the existence of a different state of things at the time."

The court, after taking time to consider, intimated, that the doctrine of estoppel was not strictly applicable to the case, and that the decision of the question must be governed by the provision of the Stamp Act, 31 Geo. 3, c. 25, s. 19, which is incorporated in the later acts, and enacts that no bill or note liable to the duty shall be pleaded or given in evidence in any court, or admitted in any court to be good, useful, or available in law or equity, unless

<sup>b</sup> 6 Ad. & El. 469; 2 Nev. & P. 488. See also *Gregg v. Wells*, 10 Ad. & El. 90; 3 P. & D. 296; *Pitt v. Chappelow*, 8 Mees. & W. 616, & Sug. Vend. & Pur. 10th Ed. Vol. 3, p. 423.

stamped. The judgment proceeded on the ground that whenever it appeared on a trial, that an instrument tendered as evidence was not properly stamped, the objection strictly was one to be made by the court; and there was no reason either upon principle or authority for saying, that when such an objection was taken by a party the court should not give effect to it. It was therefore determined, that the bill ought not to be received in evidence, and that the verdict taken for the plaintiff must be set aside and a nonsuit entered.

The increased facility of intercourse between this country and the Continent, has brought a considerable amount of foreign bills of exchange into circulation, and we have reason to know, that the fraud which furnished a successful defence in *Steadman v. Duhamel*, has been practised in other instances, which have not come before the public. In this, as in other cases, when value is given for negotiable securities, perhaps the indorsee's best protection is the character of his immediate indorser; but the multitude and urgency of commercial transactions does not always afford time or opportunity for much preliminary investigation:

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### COMPENSATING DEATHS BY ACCIDENT.

9 & 10 VICT. c. 93.

An Act for compensating the Families of Persons killed by Accidents. [26th August, 1846.]

1. *An action to be maintainable against any person causing death through neglect, &c., notwithstanding the death of the person injured.*—Whereas no action at law is now maintainable against a person who by his wrongful act, neglect, or default may have caused the death of another person, and it is oftentimes right and expedient that the wrongdoer in such case should be answerable in damages for the injury so caused by him: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That whosoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and

although the death shall have been caused under such circumstances as amount in law to felony.

2. *Action to be for the benefit of certain relations, and shall be brought by and in the name of executor or administrator of the deceased.*—And be it enacted, That every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportionate to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct.

3. *Only one action shall lie, and to be commenced within twelve months.*—Provided always, and be it enacted, That not more than one action shall lie for and in respect of the same subject matter of complaint; and that every such action shall be commenced within twelve calendar months after the death of such deceased person.

4. *Plaintiff to deliver a full particular of the person for whom such damages shall be claimed.*—And be it enacted, That in every such action the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

5. *Construction of act.*—And be it enacted, That the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject matter; that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender; and the word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and the word "child" shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter.

6. *Act to take effect after passing, and not to apply to Scotland.*—And be it enacted, That this act shall come into operation from and immediately after the passing thereof, and that nothing therein contained shall apply to that part of the United Kingdom called Scotland.

7. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.



## LECTURE AT THE MANCHESTER LAW ASSOCIATION.

## ON MORAL TRAINING FOR THE PRACTICE OF THE LAW.

*By a Member of the Association.*

I SHALL not commence this lecture, gentlemen, with any formal apology, either for the subject proposed for our consideration, or for my own appearance as the lecturer. For the latter you will permit me to plead a natural sympathy with those who are struggling with toils and perils through which I have passed, and a wish to take some part, however humble, in any undertaking for their benefit. As to the former, you will not be surprised that those who so gladly supply you with the advantages of this institution are deeply solicitous as to your moral improvement. They have the strongest reasons for desiring that those who are to be their companions and successors in professional life should be men, not only of sound and ready learning, quick intelligence, mature judgment, and practical good sense, but also of firm and acknowledged virtue,—men whose probity shall equal their skill, and whose complete preparation for the practice of the law shall fully qualify them to discharge its duties, sustain its honours, and reap its best rewards.

It will be an easy task, as I trust, to convince you that *all* education is imperfect which does not provide for the moral training of its subject. Supplying neither the motives to virtue, nor the means of becoming virtuous, it leaves a man, otherwise the most capable for good, useless, except for evil. This is not the place to discuss the nature of either the motives or the means, nor is the discussion necessary to our purpose. Whether the true standard of action to an intelligent agent is to be found in a devout submission to the will of the Supreme Being, or in a considerate regard to our own happiness, or in a benevolent desire to benefit our fellow-men;—whether the power to overcome evil is proper to our nature, or must be obtained from some external source;—what are the modes of educating or acquiring this power;—these are questions the very mention of which may satisfy us how distinct and how important a department of inquiry they constitute, and how much he who has never studied them has yet to learn. We often hear of an *unprincipled* man, and attach an odium to his character, without considering, perhaps, the strict meaning of the phrase, or suspecting how closely we resemble him. The term does not necessarily denote a person of malignant passions or dishonourable habits; but simply implies the absence of a settled rule of conduct. But, by an easy induction, we speak as if this were tantamount to the existence and control of every evil principle. It is even so. We know nothing yet, gentlemen, which will qualify us for the duties of life, unless we know something also of moral regulations and restraints. To observe these,—to live and do

the right,—is indeed the perfection of humanity,—at once “the beginning of wisdom,” and its true final development.

Let me caution you against any mistake as to this point. Many will agree with you that all education without moral training is imperfect, and will even admit that moral training is the chief end of education, who, nevertheless, so confound the mental with the moral as to deprive the previous considerations of their proper force. It is a common but most dangerous practical error, which so associates the cultivation of the intellect with the amendment of the heart, as to suppose them to be essentially connected. Be assured that they may be totally and fatally disjoined. It were vain, indeed, to deny that those habits of industry and self-control, which are necessary to mental excellence, may be directed with the greatest possible advantage to a higher class of pursuits; as, on the other hand, it would be unfair, in the impartial consideration of the question, to omit all estimate of the influence which a good moral training exerts upon those same habits of industry and self-control. But it is as certain that the highest degree of mental culture may co-exist with the utmost degradation both of principle and conduct, as that the ignorant may be sublimely virtuous. In that war within us of which every man is conscious, let us not believe that the most perfect reason is always strong enough to conquer passion. Light has no motive power, nor can the intellect command the will. Moral training must be of a moral kind. The secret springs of the will must be touched: there must be the “breaking up” of the “fountains of the great deep” of the human affections.

Important as those statements are in regard to education generally, they apply with special force to a preparation for that branch of the legal profession to which most of you, I presume, seek to belong. I know well the ground on which I tread. Out of the walls of this our own institution, he were a valiant man who spake of the moral virtues essential to the formation of the character of an attorney. Take the popular estimate of such a person, and you might well be spared the infliction of this lecture. Witch-hunting has gone out of fashion, but the ideas which identify the attorney and the knave still pervade our current conversation, our literature, our legislation, and even the administration of justice. Men who never darkened our doors, except they were dragged there by some dishonesty; Novelists of poor invention; Senators who lack a grievance or love a job; Counsel, who, for the most part, affect an indifference to our patronage which it is impossible that mortal men should feel; Judges themselves, unmindful of the source from which some of the most distinguished ornaments of the bench have sprung, and of the facilities which, in the vast majority of cases, are afforded to the bench, by the skill and patience of the man who first handles them;—none of these can resist his opportunity of stale sarcasm, or meagre fiction, or downright in-

justice, or needless affront, or arbitrary rebuke. It is not difficult to discover some at least of the causes of the feeling. It is doubtless cherished by occasional instances of malpractice, though one wonders then at the unwonted scrupulousness with which they are detected and denounced. But the prejudice itself lies not against these abuses, but against the profession itself, and is founded partly on a not unwilling ignorance of the precise nature and scope of our avocations; partly on an absolute incapacity to appreciate them,—a stupid insensibility to the value of mental labour; partly on the unnecessary vagueness of the rules which regulate our remuneration; and partly on the want of a generous confidence as to our legitimate employment of the advantages, whether of information or otherwise, which daily practice places at our disposal,—a vulgar suspicion of power. In most instances it is based on the mere fact that other people entertain the same prejudice; while, in the case of many men in the higher walks of the profession, it may result from a desire to avoid a reproach, which, after all, they share, to a great extent, in common with us, and to vindicate their own position at the expense of ours.

I will not suppose, gentlemen, that you have commenced your novitiate with any such disparaging views of your future employment. But permit me to remind you, that your modes of thought and feeling may have been tinged insensibly with the prevailing impression. You have not been deterred, indeed, from your choice of the profession by any apprehension of its being inconsistent with your honour and respectability; but have you, on the other hand, duly considered the responsibilities which you have thus undertaken? Some of them will be easily enumerated.

Remember, in the first place, that while we are all dependent upon each other, and our conduct in life variously and intimately affects those with whom we are connected, the character of your avocations is to be essentially *fiduciary*. You are to be, to a large extent, the *trustees* of the property, reputation, and feelings of your fellow citizens. Other men act immediately for themselves. It will be *your* duty to act directly for *others*, and only mediately and subordinately for yourselves. You thus commence life with a high profession,—with a virtual declaration that you are specially trustworthy; and you, therefore, least of all men, have a right to disappoint the public expectation. Whatever be the principle and conduct of men sustaining ordinary relations, surely he who embarks in a course demanding so largely the confidence of others may reasonably be expected to qualify himself accordingly. His virtues are twice blessed; his vices doubly mischievous; while the guilt attaching to him, should he forget his obligations and betake himself to dishonourable practices, is heightened by the fact, that by his very choice of a profession, he asserted his moral, not less than his mental, competency to discharge its duties.

And how various and important are the

trusts the management of which you seek. Very early in your career you will discover that your technical learning and your increasing acquaintance with human nature and with the business of your calling are not the main qualifications for your duty. You may be able to determine with comparative ease the legal right, but moral claims also will require your adjustment. Questions of property may occasion you little embarrassment, but questions of character will test severely, not only your power of discrimination, but your sense of honour. An attorney shares the most secret counsels of his client, and is his adviser in the most complicated difficulties,—the manager, in many instances, of property placed so entirely under his control as almost to invite mal-administration; not seldom the trusted guide of more than one generation; the highest authority as to family arrangements, and the last resort in case of family disputes. Some of you, gentlemen, perhaps aspire to the bar. It is an honourable ambition; but I can encourage you, if you wish it, by the assurance that less virtue will serve you there. No calling under heaven, indeed, save one, will furnish you with ampler opportunities to exhibit the noblest qualities; but,—and let nobody suspect me of any affectation of superiority when I say it,—you may get on without them. You may imitate such men as Hale and Somers and Romilly, to omit all mention of living names; or I can find you very different models, which you may study and yet succeed. You will not find it necessary to the keeping of the Queen's conscience that you should be very particular as to your own. But I again impress it on you, if you are to practise as an attorney with anything like reputation and success, you have no alternative. I state a broad rule, admitting an inconceivably small number of exceptions,—without a steady moral principle and firm moral courage, you will never take a permanently high position.

Proportionate to the confidential character and the variety and importance of an attorney's avocations is the *influence* which he exercises upon those around him. The habit of confidence, especially as to concerns of moment, necessarily begets respect, and the client soon leans to the opinions of his legal adviser on points far more interesting than those of abstract law. The Romish confessional is not the only place where the unreserved communication of one man's whole heart to another confers an almost unlimited control upon the trusted party. Such influences, liable as they are to be abused, are not of themselves evil. They may be the result of craft on the one side, and of ignorance on the other; but they more frequently spring out of the unequal distribution among mankind of genius and learning. The practice of the law, as I have said, affords peculiar opportunities of acquiring this power, and involves, therefore, a trust far higher than those of which I have before spoken. How prompt and effective a check may be placed by a sagacious and high-minded

practitioner upon projects of cupidity and malice, and even upon grosser crimes, existing at length, perhaps, in hearts little conscious of them! What impulses is it in his power to give, though sometimes he dares scarcely avow his purpose, to thoughts and acts of charity! If the world distrust him because of his power to do evil, it may envy his power to do good, while he himself may well shrink from the additional responsibilities which both involve.

It may appear to some of you, and it would doubtless strike a nonprofessional hearer, that the tone of the preceding remarks has been forced and unnatural. The attorney, it would be said, has been placed too high in the scale of society, and his duties and responsibilities greatly over estimated. Yet all would agree that it is difficult to describe too strongly the moral qualifications which alone can arm him against the *temptations* incident to his profession. Protesting, as we are bound in truth to do, against the popular injustice which denies us almost the possibility of virtue, which of us would not be prepared to admit that the character of our pursuits peculiarly exposes us to the solicitations of evil? The habit is soon acquired of regarding questions, not primarily with reference to the principles which should regulate our own conduct, but to the rights and interests of others: and it cannot fail to result, if not carefully watched, first in the perplexity, and then in the perversion, of our judgment. Our knowledge of the forms of the law, and our conviction of the general justice of the principles which rule them, may lead us to forget, or leave us unable to trace, the rule of duty in cases to which the forms are applicable, but which are not embraced by the principles. The very fact of our acting for others, and with a conscious desire to promote their benefit, may lull our suspicions as to particular courses of action. In proportion to the exclusiveness of our devotion to the interests of our client, is, of course, the lack of those checks which every considerate man places upon himself in the pursuit of a personal object. Questions of remuneration, also, present their difficulties to an honourable man in a profession where the modes of payment are so various and unequal,—where the severest labour is often totally unrequited, and an otherwise excessive compensation is given for services of mere routine; while it is left to the receiver himself to balance the excess and the deficiency, first, in each individual instance, and then in his entire practice. But the subject would soon weary us. It will be well if it occupy our subsequent thoughts. Enough has been glanced at to convince you of the need of some special preparation to encounter these difficulties. If your estimate of the dignity of the profession has been heightened, let me hope that it will be duly moderated by a lively impression of its dangers; and if your combat with evil is to be fiercer and more protracted than that of other men, address yourselves to it with a chastened but courageous spirit: your triumph also will be the more signal.

Allusion has before been made to a topic which cannot be discussed at length: I refer to the influence of moral upon mental training. That they cannot exist separately is an error which I have already attempted to expose; but it nevertheless holds true that a good moral training has an obvious tendency to assist in training the faculties of the mind. The remark applies with special force to those qualities which are most valuable to a legal practitioner. The combined powers of patient thought and prompt decision, of quick discernment and of caution to commit oneself to action; in short, all the characteristics which confessedly attract confidence, and so secure success, are the result, almost necessarily, of a well disciplined condition of the moral powers; and if the connexion is sometimes broken, it is in comparatively few cases, and in those only where the moral discipline has been abandoned.

There are two ways in which the undoubted tendency may be accounted for. In the first place, he who has acquired firm moral principles has learned to estimate the extent of his responsibilities. Other men take their chances of filling with honour and advantage their allotted position in society. He has searched out the foundation of his obligations, and has therefore become anxious to know their full import and practise them to the utmost extent. If there be any truth in the hasty sketch which has been drawn of the obligations attaching to an attorney, how important to count the cost before we undertake them, or, having undertaken them, at least in preparation, to ask ourselves how far we are qualified to discharge them!

Then again, he who has had an efficient moral training has, by the *very force of circumstances*, an advantage over a man of unregulated passions and depraved tastes. He possesses, for instance, clear rules of action. He has been accustomed to act according to certain principles, and the longer he lives the easier does he find it to apply those principles wisely and promptly to each particular exigency. He is never at a loss what to do, except in so far as any question of *right* may be doubtful, and how seldom does such a question present itself to a really upright and candid mind! Other men must first acquaint themselves with the results, both collateral and direct, of the course they are intending to pursue. He who knows that his course is *right* is free from every perplexity, and has the courage to act at once.

And this simplicity of purpose not only gives discrimination and strength of mind, but imparts to it new ardour. That which is *right* must be done, and *may* be done safely and with advantage. Yet there is no inducement: rashness here. Virtue results in tranquillity not less than in power; and the same principle which impels to action sustains in the patient abiding for the proper time to act. A man accustomed to regard his own interest as the ultimate object of pursuit has all the difficulty in the world to hold on his way. He starts

one obstacle only to stumble over another. He lives in a perpetual storm of projects, doubts, and disappointments, with an occasional glimpse of sunshine, it may be, but that only to be succeeded by the accustomed agitation. How can you expect him to act with either sagacity or vigour? You must give him a better rule: you must furnish him with new powers. Clear the atmosphere of his spirit; set up within it the great lights of truth and conscience; and the obscurities and dangers of his path exist no longer; he sees and chooses the plain path before him, and finds it the road to happiness, honour, and success.

I am sensible, gentlemen, that I have detained you too long in this very inadequate attempt to point out to you the *necessity* and *advantages* of moral training for the practice of the law. I shall be more brief in suggesting to you some of *these peculiar branches* of moral training to which I think your attention may be properly directed.

I abstain purposely from any caution as to the avoidance of those grosser immoralities the indulgence in which is totally incompatible with any continuous rational pursuit. It is not my business here to denounce particular vices, nor will I suppose that a body of young men, distinguished, as I have pleasure in believing, for their arduous attention to the studies of their profession, have either the time or the taste for depraved or sensual habits. Yet, were there only one here unaware of the force of temptation, of the danger of yielding to it, and of the certain ruin, both professional and personal, to which such yielding will expose him, would it not have been unfriendly and unfair to avoid this passing allusion to the topic?

Let me place first in the category of duties peculiar to your preparation for the practice of the law a *competent knowledge of your profession*. For, if it be true that you are about to undertake a great trust, that the interests of your fellow men will be confided so largely to your care, and that, too, it will be remembered, with comparatively little power on their part, either to check or remedy mismanagement, surely one of the first obligations you owe to society is to qualify yourself for the position you are proposing to assume. A similar obligation attaches more or less to all the professions,—to all situations in life where one class of men takes upon itself the pursuit of a particular branch of knowledge, and the practical application of that knowledge for the benefit of others. The clergyman,—the physician,—the lawyer,—each sets up a claim to superiority within his own domain; and the common consent, founded upon the common experience, of mankind allows the claim, as, on the whole, sustainable. Frauds, indeed, are common; and, in the secular professions, there is, at least, as much imposture as merit; but there would be a great deal more injustice and mischief in condemning the class for the sake of the individuals, than in tolerating the individuals for the sake of the class.

There is a necessity, indeed, in the case. Ordinary men,—men of inferior powers, and therefore, of low desires, cannot help deferring to men of mind; and men of mind will not fail to occupy themselves, either in the higher departments of intellectual knowledge, such as divinity and law and their kindred pursuits supply; or of natural science, with which the art of healing is so closely allied. But as this necessity by no means relieves a professional man, however well qualified, from the duty of directing every attainment to the largest amount of general good, much less does it excuse him from blame if his qualifications be defective. For an attorney to commence practice, so taking advantage of the popular impression as to the skill and knowledge of our branch of the profession, while his own idleness or inattention have left him unprepared to fulfil its functions, is a pure imposition,—an attempt to obtain money on false pretences,—a trifling with important interests, which indicates either the grossest carelessness, or the most culpable disregard of the first principles of morality. Such a man *sometimes* succeeds in acquiring a connexion, or in keeping together for a time one formed already for him; but your own observation, perhaps, will have supplied you with cases in which the issue of the adventure has been more than ordinarily disastrous. There has been a flood of business;—a whirlwind of bustle and bullying, and hosts of confident clients;—wise fellow practitioners, who at first shook their heads, and thought people would surely come to their senses, at length found it prudent to recognize the standing if not the talent, of the pretender;—barristers spoke courteously to him;—London agents could not contain their delight;—and then came the crash. Incompetency had betrayed him into the grossest follies; they into still more foolish attempts at concealment or at remedy; and they into disgraceful crimes. More probably still the unfurnished practitioner fails from the very outset; distrusts the little knowledge he has; hesitates and blunders; disgusts and drives away his client; and either grows tired of sitting in a deserted office, and, by an easy course, becomes a vagabond; or sets up for a pettifogger, screwing out of the poor by processes which it costs him neither trouble nor knowledge to pursue, the meanest of all livelihoods. Let me urge it upon you, gentlemen, both as a moral duty itself, and as indispensable to the consistency and respectability of your future course that you avail yourself of present opportunities, that you spare no pains to obtain such an acquaintance with your profession as will not only make it sit gracefully and comfortably upon you, but qualify you to take the lead when your turn shall come, and to leave to your successors an example of legal learning and skill.

I pass to another remark. If you wish to be duly trained for the practice of law, you must be men of the most scrupulous honour. After what has been said, need I suggest to you how intimately this must pervade the whole of your

transactions? It is the soul of your profession. With what a delicate regard to its demands must our intercourse with our clients be conducted! What care is it incumbent on us to take that no personal concern of ours, however weighty, shall compete with any interest of theirs, however comparatively unimportant. Their very position appeals to us. Placed, as I have before had occasion to remark, so absolutely under our control in the matters respecting which we confer, yet ignorant often of the terms we employ, and of the reasons for particular lines of procedure—what a temptation—what an ineffable wickedness to betray them! With our professional brethren, also, what occasion is there that, even in our zeal for our clients we never lose sight of the same great principle! With them the compact to speak truly and act fairly is just as strong as is that with our client. There is a virtual understanding, more binding than the most express and solemn pledges, that, at least in our intercourse with each other, the utmost candour and truthfulness shall be observed; and the understanding is as beneficial to those who entrust us with their confidence as it is to ourselves. The attorney who breaks it, breaks down his own protection; and no partial petty advantage which he can gain for the time can compensate him for the subsequent privations to which he must needs be submitted. And there are other parties besides those with whom we constantly associate who possess a claim quite as strong upon us as a consistent and upright course. Our conduct towards them is even yet more incapable of efficient checks,—while many of them take so little pains to conceal their utter want of confidence in our integrity as almost to set us at liberty, so far as they are concerned, to take any course we like, if only they do not find out that it is a bad one. Now, the best preparation for all these cases to which I can direct you is the acquisition of the habit of carefully considering your actions in reference to this precise requisition of which I am speaking. Do not carelessly, even when you do not suspect yourself of any intention to act wrong. Study to be honourable. I do not say merely,—register your promises in your deepest memory and perform them with an exact fidelity;—but learn the nicer lessons of honour arising from your relations to others, from surrounding circumstances and events,—and often from your own inadvertencies and mistakes. Do not wait the period of practice, before you commence this best possible training for it. Not the youngest amongst you but has his present opportunities of acquiring the feelings and principles of a man of honour—of honour, properly so called,—not an aptitude to take offence, not a self-conceited notion of individual importance; but a manly, solid, and enduring virtue, which will lead its possessor through life a wise and generally a happy man, and, almost certainly, a successful practitioner.

Permit me further to remind you how much your progress will be facilitated if you possess a generous and liberal spirit. If this be not

indeed the spirit of our profession, which we who know most of it have reason to believe it is, I am sure we cannot deny that it ought to be. Probably no profession affords opportunities for more frequent or more reasonable acts of kindness. The very manner in which we communicate with those who consult us, may often do them as much service as the best counsel we are able to give them. But our services may be far more substantial. I have alluded to the influence which a high professional character will confer upon an attorney, and to the facilities for doing good which he thus enjoys. Who can tell in how many ways it may be brought to bear upon the happiness of others,—sometimes in the way of direct advice, and sometimes of indirect, well-timed suggestion. And this same generosity must mark our pecuniary transactions. Nothing can be more opposed to it than a greedy desire to make the most of every chance of gain,—regardless of the many circumstances which modify the right to take it. I have no doubt whatever of the fact, though the assertion would startle the majority about us, that in our ranks are to be found fewer men notoriously grasping and covetous than in any other calling in life,—at all events embracing the same number of persons; and yet I know of no profession in which the liability to that particular evil may be supposed to be stronger. The attorney's profits are unequal, his expenses great; his opportunities of acquiring sudden wealth just none at all; and he is, therefore, more exposed than others to the temptation to calculate the value of little gains—to glean the uttermost farthing,—to shut himself up against appeals to his pity, and so to accumulate slowly what men in trade often pluck at one handful from the tree of fortune. Against any excess of this disposition we cannot guard ourselves too early. Generosity of temper, too, may be adverted to under this head. Professional men are notoriously jealous,—because they are, generally speaking, men of mind; and while it is easy for a clever man to submit to a general impression that his competitors are more fortunate than himself, it is difficult to reconcile him to the idea that the better fortune is the result, not of popular caprice, but of popular discernment. In a large community, happily, these jealousies have little scope, except in confined circles, or perhaps amongst the leaders of a profession. Some of you, however, expect to practise under other circumstances, and will, therefore, appreciate the caution to forearm yourself against anything like a spirit of rivalry. Be sure that you, too, will succeed in your turn, if you really deserve it. And let us all learn this generosity of behaviour to our fellow-practitioners, whose interests do not appear to come into collision with our own. Far from us be any habits of open detraction, or quiet insinuation, which may prejudice their character,—any pleasure in exposing their occasional weaknesses or mistakes; further still, any mean and under-hand attempts to promote our own interests at

their expense; to interfere with their clients, and take their business, even when favourable chances are presented, and the sense of honour does not restrain us. We shall lose nothing by our forbearance. What we sacrifice in any individual case, will be more than made up to us in the course of a lengthened practice; and, were it not so, which of us would willingly expose himself to the suspicion and dislike, to say nothing of the mental disquiet and self-reproach, which the contrary procedure would involve?

Not less valuable will you find the cultivation of a constant *command of temper*. Of how much advantage this will be to you in your professional life, those only can tell you, and they are, unfortunately, many, whose excellent character and many amiable qualities are all shaded by the contrary infirmity. To your comfortable intercourse with your clients and with your fellow-attorneys, this attainment is indispensable. Repeated instances of its absence will absolutely disqualify you for practice. How otherwise can you deal with those questions, requiring the utmost clearness of judgment and coolness of action, which will constantly come before you? Hastiness of temper, indeed, is a defect so common that we consider it a trivial fault. But to how much evil does it often lead men of almost perfect virtue! Least of all men can the attorney afford to indulge in it. The mistakes he makes are more than those of others fatal and irreparable; and the preservation of a serene and tranquil state of mind is by so much the more important to him. And, depend upon it, the wear and tear of practice will rather test than impart this quality. The quickness with which an attorney passes from one business or client to another,—the frequent hurry in which he is compelled to act; the variety of persons with whom he has often to deal with at the same time; the intricacies of the questions sometimes demanding his decision,—all those are sore trials of temper, and he is a happy man who has obtained the mastery over it and can direct it to his purpose at his will.

Closely connected with this is the acquirement of a *bland and courteous demeanour*, a quality which the period of your clerkship will afford you the best possible opportunities of acquiring, and which, probably, if you do not learn then, you will never learn at all. There are two extremes which you will do well to avoid. I cannot recommend to you that oily and sycophantic bearing which some young men have adopted, properly anxious to get on in their profession, but not well studied in the way to rise. I advise you strongly to respect yourselves if you wish other people to respect you, and carefully to eschew any style of manners which leaves you open to the suspicion of aiming to succeed, rather by tripping up your companions in the race, than by the fair competition of talent and character. Some young men, on the other hand, and I imagine, a larger class, despising all these efforts to produce a false impression, but somewhat too

confident of their own abilities, adopt a rough and overbearing manner, innocent enough in its origin, but very prejudicial in its effect to their advancement in life. I know how hard it is, particularly as some of us are constituted, to hit the true mean; but if the object be practicable, it is well worth our while to make the attempt. Your demeanour to your master, his clients, and your fellow-clerks, if only regulated by that consideration and respect which their several relations to you require, will be a sufficient and appropriate training for you in this respect; and you will not fail to find that with a proper sense of duty, a calm and even temper, and a proper desire to please, the habit will be easily acquired.

I note next a *candid and open disposition*. I know no reason why any man should *affect reserve*, any more than he should try to make himself particularly odious and disagreeable in any other way; and the inference, therefore, that I always draw when I meet with a man who resolutely refuses to unlock himself, and shuts up his thoughts and feelings in the dark, is just this,—either that he knows the scantiness of his resources, or has some very bad reason for his concealment. An attorney, indeed, more than any other person, has his secrets; but all the world knows it, and likes him the less accordingly, without his assuming a manner which perpetually reminds us of the fact, and arrogates to himself an excessive importance. I need say nothing, in passing, by way of cautioning you prospectively against the habit to which some members of our profession give way, of perpetually prying into matters which do not professionally concern them. My present advice lies in another direction. Do not *affect secrecy*; do not be unnecessarily reserved. Deal openly with all with whom you have to do. Invite their confidence by sharing with them your own, of course within prudent limits; and every man whose confidence you thus secure, will become, by the very necessity of things, your friend and helper.

Shall I say anything of a *modest and on humble spirit*,—a spirit agreeing well, as you will admit, with your present position as clerks and students, and more than any other fitted to arm you with that prudence and caution which are the first elements of the legal character? For one man that has failed in life through the want of proper self-reliance, how many have failed through over confidence and pride! At all events you must not become *proud attorneys*, unless you wish to pass through painful processes, perhaps too late to derive any benefit from your experience. Impress it deeply upon your minds, that in habituating yourselves to form a moderate estimate of your own talents and attainments, you are adopting the best possible method to develop and increase them, and to take your proper and acknowledged place in society when the proper period shall arrive.

Other topics of a kindred character will present themselves to your consideration, if I have been happy enough to fix your attention upon

the general subject of this lecture; but I have already detained you too long. I conclude with one or two observations.

And first, allow me to congratulate you on the advantages which you enjoy for securing the training of which I have spoken. We live in an age of many errors, but possessing also many favourable peculiarities. Not the least of these is the attention which is directed to the general subject of the moral training of men. For the present, indeed, the public interest seems to extend itself, for the most part, in controversy; but I cannot doubt that it will ere long fix itself upon those great principles of human culture, which have been settled for ages, and which are alone able to renew our race. Meanwhile let us make the most of an age of controversy. That cannot be a trifling object which occupies so busily the thoughts and stirs so deeply the sympathies of our fellow-men. Let us learn to estimate its importance, more especially in its application to ourselves and our profession. If we commence our own moral training in an humble yet courageous frame of mind,—and with a steady reference to the one sure guide of human conduct, we shall not fail in the attempt. The duties of our position will become at once more plain and more practicable;—our life will bloom with pleasure, and abound with perpetual fruit.

Nor should I be doing justice either to the character of my professional brethren in this town, or to my own sense of gratitude for a continuous course of friendly consideration, were I to omit all reference to the facilities you enjoy, as well in the moral as in the mental departments of your legal education, in your happy connexion with those gentlemen,—a body of practitioners—as I may take it upon myself to say, without incurring the imputation of anything like self-adulation—as remarkable for the exact honour, gentlemanly feeling, and courteous bearing which characterizes their transactions, as for the extent of their professional acquirements, and their eminent practical ability.

It is to their judicious regard to your interests, gentlemen, that I owe the privilege of having addressed you this evening, in connexion with the Manchester Law Association, and that you have been indebted for the services of many able men who have occupied this position. Let us part with the expression of our wishes for the perpetuity and success of the institution, and for the increasing prosperity of its members; for your own steady progress in the road to professional success; and for the honour and advantage of the law itself in all its departments and professors. May its fountains be kept pure,—its streams made yet more free! May it still remain the sole expounder of the principles of the constitution; and the guardian of private rights! May our own department of it, in particular, become more flourishing and respected,—a school of knowledge, a nursery of virtue, a source of deserved advantage to ourselves, and of well-appreciated usefulness to our fellow-men!

## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

### Courts of Common Law.

## II. PRINCIPLES OF THE COMMON LAW AND GROUNDS OF ACTION.

### AGENT.

*Order to admit bill of exchange.*—If an order to admit a bill of exchange is made, where the notice describes it as having been “accepted by one H. B. for the defendants,” it is not competent to the defendants to dispute the authority of H. B. to accept as their agent.—*Wilkes v. Hopkins*, 3 D. & L. 184.

### ANNUITY.

*Form of memorial setting aside securities.*—In the memorial of an annuity, part of the consideration money was stated to have been paid by “a draft of even date with the indenture, drawn by the grantee on Messrs. A. B. & Co.,” not saying when the draft was payable: *Held*, that the memorial was insufficient, and the grant consequently void.

The court, in such cases, only deal with the judgment signed upon the warrant of attorney, and will not interfere with the other securities.—*Abbott v. Douglas*, 1 C. B. 483.

Cases cited in the judgment: *Rumball v. Murray*, 3 T. R. 298; *Berry v. Bentley*, 6 T. R. 690; *Poole v. Cabanes*, 8 T. R. 338; *Morris v. Wall*, 1 B. & P. 208; *Drake v. Rogers*, 2 Brod. & B. 19; 4 J. B. Moore, 403.

### ARREST.

*See Malicious Arrest; Sheriff*, 1, 3.

### BAILMENT.

*Determination of, by means of tortious act of bailee.*—A bailee of goods for hire, by selling them, determines the bailment, and the bailor may maintain trover against the purchaser, though the purchase was *bona fide*.

A. conveyed goods by bill of sale to B. B. allowed A. to use the goods at a weekly rent, A. undertaking to deliver them up on demand. A. afterwards sold and delivered the goods to C., a *bona fide* purchaser: *Held*, that B. might maintain trover against C. *Cooper v. Willomatt*, 1 C. B. 672.

### BILL OF EXCHANGE.

*See Agent.*

### BILL OF LADING.

*Delivery.—Landing at wharf.—Risk of fire.*—*Demurrer.*—To a count in assumpsit by A. against B. upon a contract by B., safely to carry in a steam-vessel certain goods of A. from Dublin to London, and to deliver the same at London to A. or to his assignee, upon payment of freight, assigning a breach in non-delivery of the goods in London, B. pleaded that the goods were put on board under a bill of lading, by which they were made deliverable to A., or his assigns, on payment of freight; that after the arrival of the vessel and

goods at London, B. caused the goods to be unshipped, and safely and securely landed and deposited upon a certain wharf at London, there to remain until they could be delivered according to the bill of lading, the said wharf being a place at which goods conveyed in steam-vessels from Dublin to London were accustomed to be landed and deposited for the use of consignees, and being a place fit for such purpose; and that the goods, whilst they remained upon the said wharf, and before a reasonable time for the delivery thereof had elapsed, were accidentally destroyed by fire.

It was also pleaded to the same count, that after the arrival of the vessel and goods at London, B. was ready and willing to deliver the goods to A. or his assigns, but that neither A. nor his assigns was or were there ready to receive the same; whereupon B. caused the goods to be landed on the said wharf, there to remain until A. or his assigns should come and receive the same, or until the same could be conveyed and delivered to A. or his assigns, with the like averment as to the said wharf being a usual and fit place; and that the goods, whilst they remained upon the said wharf, and before A. or his assigns came or sent for the same, and before B. had been requested to deliver the same to A. or his assigns, or a reasonable time for conveying them from the said wharf to A. or his assigns, had elapsed, and before the same could be removed therefrom, were accidentally destroyed by fire.

*Held*, in the Exchequer Chamber, in affirmance of the judgment in the Common Pleas upon the demurrer, that both pleas were bad in substance, as they neither showed a delivery of the goods to A. or his assigns, nor alleged that a delivery at the wharf was a delivery according to the usage of London with respect to goods on such a voyage, or that A. or his assigns had notice of the arrival of the goods, or that a reasonable time for A. or his assigns to receive them had elapsed when the goods were landed, or when they were destroyed, or that A. or his assigns had notice that B. was ready and willing to deliver the goods; and that, if, as the goods were deliverable to A. or his assigns, B. was not bound to deliver them until he had notice that A., or some assignee, would receive, or until the party entitled should come to receive them, still B. was bound to keep the goods on board (or on the wharf at B.'s own risk,) for a reasonable time, to enable the consignee to fetch them, and B. continued liable until such reasonable time had elapsed.

B. also pleaded that he did deliver the goods at London according to his promise. Upon the trial of this issue, evidence was admitted on the part of A. of former dealings between himself and B. as to the carriage of goods from B.'s wharf to A.'s place of business: *Held*, in Exchequer Chamber, upon a bill of exceptions, that such evidence was admissible for the purpose of showing the course of usage of delivery at the port of London; though for the purpose of adding to, or otherwise varying the terms of a written contract, it would have been inadmissible.

*Held*, also, in the Exchequer Chamber, upon a bill of exceptions, that the judge was warranted in declining to tell the jury that a delivery at the wharf was, in point of law, a sufficient delivery, that B. was thereby discharged from all further responsibility, and that no contract could be inferred from the course of dealing, to vary or superadd to the written contract contained in the bill of lading; and in stating that it was a question for the consideration of the jury, whether there had been a delivery of the goods, and it was for them to say whether, upon the evidence, a delivery at the wharf was a delivery according to the usage and practice of delivering goods observed in the port of London.

In another count, on the promise that, in consideration of the previous delivery of goods to be so carried to London for freight, and of the employment of B. by A. for other reward, to take care of the goods at the wharf, where they should be landed, and to carry and convey the same from such wharf to A.'s place of business, and there to deliver them to A. in a reasonable time after landing, — a breach was assigned in the non-delivery of the goods, although a reasonable time for that purpose had elapsed. B. pleaded, that after the arrival of the steam-vessel in London with goods on board, and after the goods had been safely landed on the wharf, B. caused the same to be safely deposited and stored upon the wharf until they could be carried and conveyed therefrom, and delivered to A., the said wharf being a usual fit and proper place for that purpose, and that B. took care of the goods whilst they remained upon the wharf until they were destroyed by an accidental fire before they could be conveyed from the wharf, and before a reasonable time for their being so conveyed, or for the delivery thereof to A. had elapsed; by means whereof, and from no other cause, and without any carelessness, negligence, or improper conduct, or want of due care in B., he was prevented from delivering the goods to A.

*Held*, in the Exchequer Chamber, in reversal of the judgment in Common Pleas upon a demurrer to this plea; that the plea was a good answer to the count, inasmuch as the contract to carry from the wharf for other reward was not of the same nature as the contract to carry to it, and the count contained no averment that B. was a common carrier; and that if B. was not subject to the liability of a common carrier whilst the goods were in the warehouse, all that he was bound to do by the contract was, to take reasonable care of the goods whilst in the warehouse.

In the Common Pleas the sum of 734*l.* was awarded to the plaintiff below for his costs, and in the Exchequer Chamber that part of the judgment of the Common Pleas was affirmed, and the sum of 311*l.* was adjudged to the defendant in error for costs of the delay of execution, on pretence of prosecuting the writ of error.

The House of Lords affirmed the judgment of the Exchequer Chamber as to the affirmance



of the reversal of the judgment in the Common Pleas, except that the judgment of the Common Pleas and of the Chamber was reversed as to part of the 711l. awarded to the defendant in error for costs, by deducting therefrom the costs which had been allowed in the Common Pleas to the plaintiff below in respect of the demurrer, the judgment upon which in his favour was reversed in the Exchequer Chamber, and also as to 311l. for costs awarded in the Exchequer Chamber, the partial reversal of judgment in that court showing that the writ of error was not improperly brought. No costs were allowed in the House of Lords. *Bourne v. Gatliffe*, 7 M. & G. 850.

2. *Bill of lading, action not maintainable by indorsee of.*—A bill of lading is not negotiable like a bill of exchange, so as to enable the indorsee to maintain an action upon it in his own name; the effect of the indorsement being only to transfer the right of property in the goods, but not the contract itself. *Thompson v. Donnelly*, 14 M. & W. 403.

Case cited in the judgment: *Sanders v. Vanseller*, 4 Q. B. 297; 3 G. & D. 584.

And see *Stoppage in Transitu*.

#### BOND.

*Payment of moneys received by A.—Condition not broken by non-payment of moneys received by A. and B. jointly.*—The condition of a bond given by defendant to plaintiff, after reciting that A. had been appointed agent for plaintiff, which employment he had accepted, and undertaken to perform the trusts thereof, was declared to be that, if A. should, during his continuance in such employment, faithfully demean and conduct himself, and, when required, account for and pay to plaintiff all moneys which he had received or should thereafter receive for plaintiff's use, the bond should be void.

Declaration on the bond set out the condition, and averred, that while A. remained in the employment of plaintiff as agent aforesaid, A. received for the use of the plaintiff moneys, amounting, &c. but did not, when required, account, &c. Plea; that A. did not, while he remained in the service of plaintiff as such agent, as in the declaration mentioned, receive for the use of plaintiff the sums mentioned.

*Held*, that plaintiff did not support the issue by proof that A. and B., as partners, were employed by plaintiff as agents, and in that character had jointly received money for plaintiff's use, it appearing that A. had never been employed by plaintiff, or received money for him solely.

And that no difference would be made by proof that defendant knew that A. was to be employed only as partner with B. *London Assurance Company v. Bold*, 6 Q. B. 514.

Cases cited in the judgment: *Lord Cheyne's case*, 5 R. sp. 68, a.; *Hassel v. Long*, 2 M. & S. 503; *Bellairs v. Edsworth*, 3 Campb. 53.

And see *Husband and Wife*.

#### BUILDER.

See *Nuisance*.

#### BYE-LAW.

*When bad for uncertainty.—Customs of City of London.*—The Plumbers' Company of London were incorporated by a charter of James I., and empowered thereby to make bye-laws. They made a bye-law, that the master and wardens might call, choose, elect, and admit into the livery of the company such person free of the art or mystery of plumbing, as they should think fit; and that every person so chosen should, immediately upon notice thereof, prepare himself to serve the same place at the then next meeting of the master and wardens, in such seemly and decent manner as formerly had been used; and that every person, so called and chosen into the same livery, and accepting the same, should bring in and pay at the next meeting, unto the master and wardens, to the use, maintenance, and relief of the company, and to the officers of the company, for entering the same, and for the warning given, such fees as formerly had been paid in like cases; "and which of them soever, so called and chosen into the same livery, refuseth to pay the said fees, or what person or persons so called and chosen into the same livery, refuseth the same, shall forfeit and pay to the master and wardens for the time being, for every such default, the sum of 5l. or less, at the discretion and pleasure of the master and wardens, so it be not less than 40s."

In a declaration in debt on this bye-law against a person who had been elected into the company, and taken the oath to obey the bye-laws:—

*Held*, 1st, that the bye-law was not bad for uncertainty in the amount of the penalty:

2ndly, That the declaration was not bad for not showing that the company was a company that had a livery,—a livery being mentioned in the charter and bye-laws:

3rdly, that it was not bad for not showing that the defendant was a freeman of the city of London; for that court could not take notice that none but freemen of the city were admissible into the livery of a company unless it had been certified to the court by the Recorder of London:

4thly, that the master and wardens alone might sue for the penalty, though it was reserved for the use of the company generally.

The breach alleged in the declaration was, that the defendant, although registered, and although a reasonable time had elapsed, and although he was and continued such freeman, did not nor would attend to serve the said place to which he had been chosen, and did not nor would attend and serve the said place at the next meeting, or at any subsequent meeting of the master and wardens, but therein made default, and refused to prepare himself to serve the said place: *Held*, that the breach was well assigned; for that one refusal, to which by the bye-law the penalty was attached, was the re-

found to prepare to serve at the next court. *Piper v. Chappell*, 4 M. & W. 624.

Cases cited in the judgment: *Innholders' Society v. Gledhill*, *Sayer*, 274; *Vintners' Company v. Passay*, 1 Lord Kenyon Rep. 500; 1 Burr. 235; *Wood v. Searl*, *Bridgman*, 139; *King v. Clerk*, 1 Salk. 349; *Leather-sellers Company v. Beacon*, T. Jones, 149; *Blacquiere v. Hawkins*, Dougl. 380; *Poulterns' Company v. Phillips*, 6 Bing. 381.

#### CHARTER-PARTY.

**Construction of.**—The defendant chartered a vessel for a voyage from London to Bombay, at which port she was addressed to G. & Co., the defendant's agents there; and by another charter-party of the same date, it was agreed, that the ship should, after discharging her cargo at Bombay, take in a homeward cargo, for which the defendant agreed to pay freight, as to one-half of cargo, at 3*l.* per ton, and as to the rest, at the current rate of freight, when the ship should be loading. In this latter charter-party there was also a stipulation, that the master of the vessel, (who was a part owner,) and G. & Co., the agents at Bombay, were at liberty to make such alterations in the charter-party as they might mutually think proper, without prejudice to the agreement. Soon after the arrival of the vessel at Bombay, the master and G. & Co. entered into a written agreement, (which was indorsed on the second charter-party,) that the ship might proceed to Aden with government coals and stores, (her outward cargo), and return to Bombay with all possible despatch, without prejudice to the charter-party. She accordingly, in the month of February, sailed to Aden, and there discharged her cargo, and returned to Bombay, where she arrived in May. The owners received a large sum as freight for this voyage to Aden: *Held*, that the defendant was bound by the alteration made in the charter-party by G. & Co., permitting their voyage to Aden, which was within the scope of the authority given to them by the stipulation above mentioned; and therefore he was bound to pay the charter-rate of 3*l.* per ton for half the cargo, although that exceeded the current rate of freight at the time of the loading, and although the alteration might be prejudicial to his interests; and that he was not entitled to have the freight earned by the owners on the voyage to Aden brought into the account. *Wiggins v. Johnston*, 14 M. & W. 609.

#### COMPROMISE OF PROSECUTION.

1. **Consideration for a contract.**—The law will permit a compromise of any offence, though the subject of a criminal prosecution, for which offence the injured party might recover damages in an action; but if the offence is of a public nature, no agreement can be valid that is founded on the consideration of stifling a prosecution for it.

Therefore, although the party injured may lawfully compromise an indictment for a common assault, an agreement to pay the costs of a prosecution for assault on plaintiff and riot,

and of an action on wrongful levy under a *f. fa.*, which agreement was founded partly on compromise of the prosecution, and partly on an undertaking to withdraw the execution under the *f. fa.*, is altogether invalid, as grounded on an illegal consideration.

Although the compromise of the prosecution was entered into with the leave of the judge before whom the indictment came on for trial. *Keir v. Leeman*, 6 Q. B. 308.

Cases cited in the judgment: *Collins v. Blanton*, 2 Wills. 341, 349; 1 *Smith's Lead. Ca.* 154; *Johnson v. Ogilby*, 3 P. Wms. 277; *Rex v. Lord Falkland*, *Kyd on Awards*, 66, 2nd ed.; *Rex v. Coombs*, ib. 64; *Fallowes v. Taylor*, 7 T. R. 475; *Drage v. Ibberson*, 2 Esp. 643; *Pool v. Bousfield*, 1 Camp. 55; *Edgcombe v. Rodd*, 5 East, 294; *Boeley v. Wingfield*, 11 East, 46; *Kirk v. Strickwood*, 4 B. & Ad. 421; *Baker v. Townsend*, 7 Taunt. 422; *Elworthy v. Bird*, 2 Sim. & Stu. 372.

2. **Guardians of a poor-law union indicted plaintiff for disobeying an order of sessions for maintenance of a bastard.** Before trial, plaintiff offered a compromise; and the clerk to the guardians, on their behalf, agreed with him for a sum, on account of costs and maintenance, which he paid, and the indictment was dropped. Afterwards, plaintiff discovered that the order of sessions was defective and void, and he brought *assumpsit* against the clerk for money had and received.

*Held*, that the clerk was not liable, having done nothing in the prosecution beyond preferring the indictment. And that, if the compromise was illegal, plaintiff, being in *pari delicto* with the other parties offending, could not sue them for money which he had paid. *Goodall v. Lowndes*, 6 Q. B. 464.

Case cited in the judgment: *Unwin v. Leaper*, 1 M. & G. 747.

#### CONDITION.

See *Deed*.

#### CONTRACT OF SALE.

**Dependent agreements.**—The plaintiffs, Messrs A. & Co. and the defendant, entered into the following contract:—"Bought of Messrs A. & Co., about 30 packs of cheviot fleeces, ewes and hogs; and agreed to take the under-mentioned noils, (coarse woollen cloths); also agreed to draw for 250*l.* on account at three months." The quantity and quality of the noils were then specified: *Held*, that this was one entire contract, and that A. & Co. could not sue for the non-delivery by the defendant of the noil, without averring the delivery or tender to the defendant of the fleeces. *Atkinson v. Smith*, 10 M. & W. 695.

#### COPYHOLD.

1. **License to demise, construction of.**—*Fine.*—On the 8th of February, 1810, a license was granted by the lord of a manor to a copyholder, to demise part of his copyhold premises to A. K. for 71 years, saving to the lord all the fines, &c., in as ample a manner as if the license had not been granted. On the 4th of

April, 1810, a second licence was granted to him to demise the remainder of the copyhold tenement (excepting the land demised to A. K.) for the term of 71 years, with this condition, "that, in consequence of his engagement to improve the said premises, and paying unto the lord a fine for his licence, it is hereby agreed, that during the said term of 71 years, the fine on all future admissions shall be at and after the rent of 37*l.* per year, for the whole, and so in proportion for every less quantity of land." *Held*, that the words "the whole" meant the whole of the residue which had not been demised to A. K.; and that the executors of the copyholder were bound to pay, on their admission to the whole of the premises, not only the two years' improved value on 37*l.* per annum, but also two years' improved value of the premises devised to A. K. *Curtis v. Scales*, 14 M. & W. 444.

2. *Demise contrary to custom.*—Who may enforce forfeiture.—Tenant of copyhold demised to A. from year to year, and, pending such demise, made a lease of the reversion for 12 years to B., contrary to the custom of the manor, by which no tenant might demise without licence for more than three years. In ejectment by B. against the yearly tenant, whose term had expired: *Held*, that defendant could not allege the invalidity of the 12 years' lease: for a lease made contrary to custom is good against all but the lord; and, even as between parties to the lease and the lord, the demise against custom is only a ground of forfeiture, which the lord may waive. *Doe d. Robinson v. Bonsfield*, 6 Q. B. 492.

## COVENANT.

See *Husband and Wife*, 1.

## CUSTOM.

See *Bye-law; Copyhold*, 2.

## DEBTS.

See *Transfer of Debts*.

## DEED.

*Construction.*—*Condition precedent.*—*Set-off for penalties.*—In an action for debt to recover a sum of money under two deeds of covenant, the declaration alleged, that by an indenture of the 19th December, 1837, in consideration of the sum of 258,629*l.* 10*s.* 6*d.*, the plaintiff covenanted with the defendants to make and complete a certain portion of a certain railway, and to provide bars or rails and chairs, on or before the 1st of May, 1840; that afterwards, by another indenture of the 23rd of March, 1839, in consideration of the further sum of 15,000*l.*, the plaintiff covenanted with the defendants, that he, the plaintiff, being provided by them with railway bars or rails and chairs for temporary and permanent use, would complete the said portion of the said railway, and the line of the permanent railway, on or before the 1st of June, 1840; provided, that if the said plaintiff should not complete the said railway by the said 1st of June, 1840, he should pay to the said defendants the sum of 300*l.* for the said

1st of June, and the like sum for every succeeding day, until the whole should have been completed, but so that the total amount to become forfeitable should not exceed the sum of 15,000*l.* Breach, that the defendants detained from, and did not pay the plaintiff a large sum, to wit, 20,000*l.*, parcel of the sum due to the plaintiff. Plea, as to 7,500*l.*, parcel of the said sum of 20,000*l.*, that the said sum of 7,500*l.* is parcel of the said sum of 15,000*l.* agreed to be retained by the defendants; that the plaintiff did not complete the said railway on or before the 1st of June, 1840, nor until 24 days after, whereby the plaintiff then became liable to pay to the said defendants the sum of 300*l.* for the first day of June, and the like sum for every such succeeding 24 days during which the railway remained incomplete, by reason of which the defendants deducted and retained the said sum of 7,500*l.* out of the moneys payable by them to the plaintiff. Replication, that the plaintiff did not become nor was liable to pay the defendants, *modo et formâ*. At the trial, it was proved that the plaintiff did not finish the railway until 24 days after the 1st of June, but that the defendants had not provided the plaintiff with the bars, rails, and chairs in sufficient quantity to enable him to complete it by that day. The learned judge told the jury, that the defendants were bound, as a condition precedent to their right to deduct the 7,500*l.*, to furnish the plaintiff with such bars, rails, and chairs: *Held*, that that was a misdirection; that the covenants were independent; and that the furnishing of the bars, rails, and chairs was not a condition precedent to the right of the defendants to make the deduction; and that, the only question being, whether the railway was completed on the 1st of June, the plea was established. *Macintosh v. Midland Counties Railway Company*, 14 M. & W. 548.

## DEVISE.

1. *Construction of.*—A. devised to B. in trust, to permit and to suffer his wife C. to receive and take the rents and profits for her own use, for the term of her natural life; and after her decease, in trust for all and every such one or more of the child or children of C., for such estate and interest as she should, by deed or will, appoint; and in default of appointment, in trust for all and every the child and children of C., and if more than one, equally, and to their several and respective heirs; and in case C. should die without leaving issue as aforesaid, then to the heirs of C. for ever: *Held*, that by "issue" the testator must be taken to have meant "children," and consequently, that the limitation over was not too remote. *Walker v. Petckell*, 1 C. B. 652.

Case cited in the judgment: *Doe d. Herbert v. Selby*, 2 B. & C. 926; 4 D. & K. 608.

2. *Limitation over in default of issue.*—*Executory devise.*—A will contained the following clauses:—"I give, devise, and bequeath the whole of my property, real and personal, whosoever and wheresoever, to my daughter B., to her heirs and assigns for ever; provided she,

at a proper time, intermarries and should have no children; then and in that case I give the whole of my property as aforesaid described, to my nephew L., excepting 100*l.* to my godson B., son of my brother J., when he shall attain his twenty-first year: and in case he should die before he attains the age of twenty-one, I give the same sum of 100*l.* to my brother J., to him, his heirs, and assigns for ever; but nevertheless, providing my daughter E. should not have child or children lawfully begotten in wedlock, I still give all my real and personal property to her and for her own use during her natural life, and at her death to be equally divided amongst her children then living, share and share alike, to them, their heirs and assigns for ever; and in case of the deaths of any of my daughter's children before they attain the age of twenty-one, in that case I desire and give to the survivor or survivors, equal share or shares of such sum or sums as may be, to be divided equally amongst them, their heirs and assigns for ever; and should it so happen that all my daughter's children should die except one, then the whole of my bequests to be given to that child, he or she attaining twenty-one years of age; and should that one child die without issue, then I give and bequeath all my real and personal estate, whatsoever as aforesaid, to my nephew L. and my godson B., to them, their heirs and assigns for ever, after the death of my daughter E."

E. survived the testator and died unmarried: *Held*, that she became entitled to the fee simple in the real estate, and to the absolute interest in the leasehold estate.—*Aspinall v. Audus*, 7 M. & G. 912.

3. *Enlargement of estate for life into estate in fee by charges*.—A testator, after charging certain lands with an annuity to his wife for his life, and giving them successively to several persons for life, devised them as follows:—"And from and after, &c. I give and devise the same (but subject and charged as aforesaid) to such person or persons as at the time of my decease shall be the heir or heirs-at-law of William Hull, formerly of Pisford, Esq., who was formerly the owner of the said messuages, &c., and who devised the same to my first wife Lydia, and which estate and premises descended to and became vested in my late son, W. G., as the only son and heir-at-law of my said late wife Lydia, and which said premises, &c. my said son W. G. devised to me in fee-simple:" *Held*, that the words "such person or persons as at the time of my decease shall be heirs-at-law of W. H. was merely a designation persons; and that the person answering that description took an estate for life only in the devised premises.

A devise of an indefinite estate, without the words of limitation, *prima facie* is a devise for life only: and a previous charge on the estate, without any charge on the devisee in respect of it, will not enlarge it into a devise of an estate in fee.—*Doe d. Samg v. Garlick*, 14 D & M. 698.

Cases cited in the judgment: *Doe d. Clarke v.*

*Clarke*, 1 C. & M. 39; *Doe d. tevans Snelling*, 5 East, 87,

DISTRESS.

See *Trover*, 1.

ESTATE FOR LIFE.

See *Devise*, 3.

ESTOPPEL:

*Particulars of sale.—Underlease.—Conversion of a reversion in fee by estoppel into a reversion for years in interest*.—Particulars of sale described the property as "a shop and a dwelling house with rooms and offices over, for many years occupied by a tenant under a twenty-one years lease, nine of which will be unexpired at Lady-day, 1843, at a rent of 48*l.* and held by lease for a term of sixty-four years, at a ground rent of 8*l.* 8*s.*

By the abstract delivered, it appeared that A, by indenture of the 30th of September, 1817, demised the premises to B. for eighty-nine years less twenty-one days from Michaelmas, 1817, with various covenants to be performed by B., his heirs, &c.; that B., on the 25th of March, 1820, mortgaged the premises for the residue of the term, to secure 487*l.* and interest to C.; and that by indenture of the 2nd of April, 1831, B. demised the premises to D. for twenty-one years less eight days, at the rent of 48*l.* with covenants on the part of D., similar to those of B. in the indenture of September, 1817.

The mortgagees were willing to execute any conveyance that might be requisite for the purpose of making a good title to the purchaser.

*Held*, that B. was in a situation to make a good title to the premises sold—the lease to D., though originally a lease by estoppel, being convertible into a lease in interest, by the concurrence of the mortgagees.—*Webb v. Austin*, 7 M. & G. 701.

Cases cited in the judgment: *Omclanghland v. Hood*, 1 Roll. Abr. 874; *Iseham v. Morrice*, Cro. Car. 109; *Weale v. Lower*, Pollexfen, 54; *Carrich v. Blagrove*, 1 Brod. & B. 531; 4 J. B. Moore, 303; *Gouldsworth v. Knight*, 11 M. & W. 337; *Whitton v. Peacock*, 2 N. C. 411; 2 Scott, 630.

FALSE IMPRISONMENT.

*Proof of fraud necessary*.—Where cotton was sold by sample, upon a representation that the bulk corresponded with the sample, but no warranty was taken by the purchaser, and the bulk of the cotton turned out to be of an inferior quality, and to have been falsely packed, though not by the seller:—*Held*, that an action on the case for a false and fraudulent representation was not maintainable, without showing that such representation was false the knowledge of the seller, or that he acted fraudulently or against good faith in making it.—*Ormrod v. Hush*, 14 M. & W. 651.

FRAUD.

See *False Imprisonment*.

FREIGHT.

*Passage-money.—Construction of mercantile*

**contract.**—*A.* a shipbroker, engaged with *B.*, a shipowner, to have “a full cargo for the ship, the rates for freight for which would average 40s. per ton, and at least nine cabin-passengers, passage-money to average 75l.” The contract was fulfilled as to the cabin-passengers, but the average rate of freight for goods put on board by *A.* amounted to 32s. only per ton; he shipped on board, however, several *steerage-passengers* for the voyage, the passage-money paid by whom, after deducting the expense of their diet, &c., when added to the freight of the cargo so called, made the average earnings of the whole ship per ton amount to more than 40s.

**Held**, that this was not a performance of the stipulations of the contract,—“cargo” and “freight” being terms applicable to goods only.

**Held**, also, that as this was an unusual contract, evidence was not admissible to show that the terms “cargo” and “freight,” used with reference to the voyage on which the ship was engaged, would, by the general usage and course of the trade, be considered to comprise steerage-passengers and the net profit arising from their passage-money.—*Lewis v. Marshall*, 7 M. and G., 729.

#### HUSBAND AND WIFE.

1. **Separation.**—**Separate use.**—**Bond.**—**Covenant.**—**Evidence.**—**Misdirection.**—By a separate deed dated the 22nd of April, 1797, *A.*, the husband, covenanted with *C.*, to pay *B.*, the wife, during her life, into her proper hands, for her separate use, or to such persons as she should by any note in writing signed with her proper hand appoint, notwithstanding coverture, the yearly sum of 163l. 16s., by weekly payments of 3l. 3s. The deed contained a proviso for redemption of the annuity, in payment by *A.* to his wife, “to and for her separate use,” of 1000l., and all arrears of the annuity then due. In November, 1797, *A.* gave *D.*, with whom *B.* lived, a bond and warrant of attorney for 1400l., and interest, payable in 1799; and in his answer to a bill filed by *A.* in 1800, to restrain proceedings at law upon those securities, *C.* admitted, that, as to 1000l., the consideration was the sum agreed to be paid by *A.* for the redemption of the annuity; and upon *A.*’s death the bond and warrant of attorney were found amongst his papers.

In covenant by *E.*, the administrator of *C.*, against *F.* the executor of *A.*, to recover thirty-nine years’ arrears of the annuity, *F.* pleads that *A.* had, under the proviso, paid to *B.* for her separate use, 1000l. and all arrears. At the trial, the judge told the jury that the absence of any payment or claim for thirty-nine years, though not conclusive, was evidence for their consideration, whether the annuity had been extinguished by payment of the 1000l. and arrears, under the proviso; and that, if the bond and warrant of attorney were given to *D.* by the authority of *A.*, and for her use, for the 1000l. and the money thereby received was actually paid to *D.* or to his personal representative, such payment was a payment to *B.*, within

the issue.—**Held**, that the direction was correct.—*Boatock v. Hume*, 7 M. & G. 893.

2. **Married woman taken in association, on what grounds entitled to discharge.**—In an action against husband and wife, the wife, being taken in execution, applied to the court to be discharged, on affidavit stating that she lived separate from her husband, had for several years been boarded, lodged, and clothed at the expense of her son, was not possessed of or entitled to any property in possession, remainder or reversion, and had no means of satisfying, or expectation of being able to satisfy, the damages or costs.

Affidavit was made in answer, suggesting generally, on information and belief, that the wife had separate funds, and stating that the son, in consideration of his father’s giving up to him a certain business, had covenanted to maintain his mother during her life, provided she would reside with him and assist him in such business; and that the wife, when arrested, was residing with the son and assisting him in the business.

**Held** that, under these circumstances, it lay on the wife to show that no property was held by the son to her use; and, this not being done, the court refused to discharge her from custody.—*Ferguson v. Clayworth*, 6 Q. B. 269.

Cases cited in the judgment: *Chalk v. Deacon*, 6 B. Moore, 128; *Hoad v. Matthews*, 2 Dowl. P. C. 149.

#### INVOICE.

See *Stoppage in Transitu*.

#### INSURANCE.

**Liability of underwriters for loss by perils of sea remotely arising from negligence in loading the vessel.**—Where a ship, insured against the perils of the sea, was injured by the negligent loading of her cargo by the natives on the coast of Africa, and in consequence shortly afterwards became leaky, and, being pronounced unseaworthy, was run ashore in order to prevent her from sinking, and to save the cargo: **Held**, that the insurers were liable for a constructive total loss, the immediate cause of the loss being the perils of the sea, although the cause of the unseaworthiness was the negligence in the loading.—*Redman v. Wilson*, same *v. Hay*, 14 M. & W. 476.

Cases cited in the judgment: *Walker v. Maitland*, 5 B. & Ald. 171; *Bishop v. Pentland*, 7 B. & C. 219; 1 M. & R. 49.

#### LANDLORD AND TENANT.

**Timber for repairs.**—**Pruning hedges.**—Plaintiff below demised land by indenture, excepting all timber, timber trees, and other trees, &c., bushes and thorns, other than such bushes and thorns as should be necessary for the repair of the fences; the lessee covenanted to keep the fences in repair during the term, finding all materials, except that the lessee should find rough wood for such repairs, if growing upon the premises; and the lessor covenanted during

the term to provide the lessee sufficient rough timber, stakes and bushes, if growing on the premises, for doing such repairs.

*Held, dubitante Pollock, C. B.*, that the provision as to bushes and thorns necessary for repairs was not an exception out of the exception, but that all trees, bushes and thorns were excepted out of the demise, whether part of the fences or not, or whether necessary for repairs or not; and that, on the trial of an action against wrong doers for cutting some of the bushes and thorns, a direction of the judge, that, if they were cut by the defendants, the plaintiff was entitled to a verdict, was right, without previously putting any question to the jury whether the bushes, &c. were part of the fence, or were necessary for repairs:—*Semble*, that, before the lessee could take any of the thorns, &c. for repairs, they must have been assigned for that purpose by the lessor.—*Jenney v. Brook*, 6 Q. B. 323.

#### MALICIOUS ARREST.

Trespass will not lie against a plaintiff, who, without notice, takes a defendant in execution for a debt in respect of which the latter has been discharged under the Irish Insolvent Act.

But if the plaintiff maliciously sue out the writ, he is liable to an action on the case. *Ewart v. Jones*, 3 D. & L. 252.

Cases cited in the judgment: *Tariton v. Fisher*, 3 Dougl. 671; *Parsons v. Lloyd*, 3 Wills. 341; and see *Yearley v. Heane*, 2 D. & L. 265.

#### MINES.

See *Prescription*.

#### MODUS.

See *Tithes*.

#### MONEY HAD AND RECEIVED.

*Money paid to the sheriff to avert a threatened sale.*—A *fi. fa.* issued against B. When the officer went to B.'s premises, on the 11th of July, to execute the warrant, he found a man in possession on behalf of the trustees, under a deed of assignment executed by B. for the benefit of his creditors. The officer thereupon retired without making a levy. On the 14th, a *fiat* issued against B., under which he was fully declared bankrupt. On the 16th of August, the officer again entered, and made an inventory of the goods on the premises, asserting that he considered himself in possession. On the 2nd of September, the assignees of B. paid the sum claimed by the writ, in order to prevent the sheriff from proceeding to a sale, which he threatened to do:—

*Held*, that the assignees were entitled to recover back the money so paid, in an action for money had and received to their use; and that, if necessary, it must be assumed, as against the sheriff, that he was, at the time, in possession of the goods. *Valpy v. Masley*, 1 C. B., 594.

Cases cited in the judgment: *Fulham v. Down*, 6 Esp. N. C. P. 26, n.; *Saowdon v. Davis*, 1 Tunt. 559; *Carter v. Carter*, 5 Bing. 406.

#### NUISANCE.

*Liability of owner of premises for injury occasioned by acts of a builder.*—B., the owner and occupier of premises adjoining the highway, employed C. to make a drain therefrom to communicate with the common sewer. In the performance of this work, the workmen employed by C. placed gravel on the highway, in consequence of which A., in driving along the road, sustained personal injury. Before the accident, the dangerous position of the heap was pointed out to B., who promised to remove it. C. had the sole management of the work, and employed and paid D. to cart away part of the rubbish, at a certain price per load, and had charged A. in his bill with the sum so paid:—*Held*, that B. was liable to A., in case. *Burgess v. Gray*, 1 C. E., 578.

Cases cited in the judgment: *Beah v. Steinman*, 1 Bos. & Pul. 404; *Quarman v. Burnett*, 6 M. & W. 499.

#### PARTNERSHIP.

*Liability for work done with a view to a partnership scheme not carried into effect.*—Certain persons proposing to form a company, applied to defendant to become president, and permitted himself to be publicly named as president of such intended company. The company was never formed; but meetings preliminary to the formation of it were held, at one of which defendant presided.

*Held*, that a jury might, if they thought fit, infer that defendant by his conduct held himself out as contracting for work to be done in respect of such preliminary proceedings, though the order for such work or labour was not directly given by the defendant. And that defendant, if he so held himself out, was liable for the work performed. *Lake v. Argyll, Duke of*, 6 Q. B., 477.

Case cited in the judgment: *Wood v. Argyll, Duke of*, 6 M. & G. 938.

And see *Promissory Note*, 2.

#### PASSAGE MONEY.

See *Freight*.

#### PATENT.

1. *Construction of specification.*—A. obtained a patent for improvements in the manufacture of woollen fabrics, or fabrics of which wools, furs, or hairs, are the principal ingredients, as well as for the machinery used therein. In the specification, the main object of the inventor was stated to be "the making of cloth by felting alone, without spinning or weaving;" and the principal feature of it to be, the "obtaining a long, even, and uniform bat of wool or other materials of any required length, width, or thickness, suitable to be made into commercial ends or pieces of cloth." The specification described the mode of producing cloth by felting, by receiving the sliver direct from the carding-engine, between two long revolving aprons, and placing it in successive folds, until the required thickness was attained; it then described the process of felting, and the machinery used or that purpose, recommending

the use of soap and water in combination with rollers, in preference to acidulated water, as theretofore used, and proceeded as follows:—

"In order to increase the felting action, it is very desirable to allow the felting-rollers to act upon the cloth in as many directions as possible. By the reciprocating motion of this machine, we have seen that this action is produced, in each direction, longitudinally; and, in order to do this in other directions, the cloth is taken from the last machine, and placed in the entering end of another similar felting-machine; but, instead of being entered as before, the piece is first passed between two felting-rollers, T., one of which is shown in figure 20, and which are placed at an angle with the feeding apron, of near 45 degrees. These two rollers have a velocity of from three to four times that of the feeding apron, upon which the cloth is thrown in regular folds as it enters, lying at nearly the same angle as the position of the rollers. This now causes the action to take place diagonally across the piece of cloth, and, after having passed through in this direction, it is reversed, and, when again passed, the action is nearly at right angles with the last." The specification then proceeded to describe a raising-machine, the raising-cylinders of which are placed in a diagonal position, "one acting from one of the lists towards the other, and the other in the opposite direction."

The patentee claimed (amongst other things) the application of the compound apron, and the extended sliver itself, as described in the specification, applied to forming a bat by successive folds or layers, for the production of long or commercial ends of cloth, without spinning or weaving; and also the diagonal or cross felting, as before described; the diagonal position of the raising-cylinders; and the use of soap and water, in combination with the rollers, in lieu of acidulated water. Prior to the date of the patent in question, B. obtained a patent for "improvements in the manufacture of hosiery, shawls, carpets, rugs, blankets, and other fabrics." In his specification, B. described a mode of cross-felting,—which was stated by one of the defendant's witnesses to be substantially the same in principle as that described by A.—as follows:—"The rollers, R. are made to traverse the semi-cylinders; and, after passing many times across them, so as thoroughly to roll the bat horizontally, the rollers should be lifted up, by means of straps attached to their ends, and by suitable machinery placed above the same, and the position of the rollers should then be shifted, so as to make them travel angularly; first, several times in one direction, and afterwards, by being again properly shifted, from angle to angle, in the opposite direction." Both soap and water had been used before in felting, and rollers also, but not in combination: *Held*, that the claims in the specification in respect of the formation of a bat by the extended sliver, as therein described, the raising-machine, and the method of cross-felting, were not too large. *Held*, also, that the claim for

the use of soap and water in conjunction with the rollers, was well founded. The adoption by an inventor of a suggestion in the course of experiments, something calculated more easily to carry his conceptions into effect, does not affect the validity of the patent: *Allen v. Remson*, 1 C. B. 551.

Cases cited in the judgment: *Neilson v. Harford*, 8 M. & W. 806; 1 Webster's P. C. 331; *Minter v. Wells*, 1 Webster's P. C. 139; *Bloxham v. Elsee*, 1 Car. & P. 558.

2. *Wood pavement*.—*Previous public user*.—Where an invention is described in a work publicly circulated in England, a party who afterwards takes out a patent for it, is not the true and first inventor, whether he derives his knowledge from such publication or not. *Stead v. Williams*, 7 M. & G. 818.

Case cited in the judgment: *Carpenter v. Smith*, 1 Webst. Pat. Cases, 718, 719.

#### PREScription.

*Mines*.—In an action on the case for working mines under ground near to the plaintiff's house, so that the house was injured and in danger of falling for want of proper support, the defendant claimed, as lessee of the manor in which the house was situate, and of the mines therein, a prescriptive right to work the mines under any houses, parcel of the manor, paying to the occupiers of the surface a reasonable compensation for the use of the surface, but without making compensation on any other account, and justified under that right.

*Held*, 1. That such prescription was bad, as being unreasonable.

2. That such a right could not exist by custom.

3. That the right, if maintainable at all, might have been claimed either under a prescription or custom. *Hilton v. Earl Gravelle*, 1 D. & M. 614.

Cases cited in the judgment: *Broadbent v. Wilks*, Willes, 360; 2 Str. 1225; *White v. Sayer*, Palm. 211; *Bateson v. Greene*, 5 T. R. 411; *Arlett v. Ellis*, 7 B. & C. 546, S. C. 9 D. & R. 897; *Folkard v. Hemmett*, 2 T. R. 417, n. (a.)

#### PROMISSORY NOTE.

1. *Consideration*.—To an action against the maker of a promissory note payable three months after date, the defendant pleaded that the promissory note was made and delivered by him to the plaintiff for and on account of a judgment debt recovered by the plaintiff against him, and that, except as aforesaid, there never was any consideration or value for the making or delivery of the said note to the plaintiff: *Held*, that the plea was bad, inasmuch as it showed there was an existing debt on account of which the note was made; and the giving of the note was evidence of an agreement by the plaintiff to suspend his remedy upon the judgment, which was a sufficient consideration for the note. *Baker v. Walker*, 14 M. & W. 465.

Cases cited in the judgment: *Popplewell v. Wilson*, 1 Stra. 264; *Serie v. Waterworth*, 4 M. & W. 9.

2. *Partners.—Separate liability.*—Messrs. J. C., R. M., J. P., & T. S., carrying on business as bankers, a promissory note in the following form was signed by R. M.:—"I promise to pay the bearer, on demand, five pounds, value received."—"For J. C., R. M., J. P., & T. S."—"R. M.:" Held, that the holder of this note had not a separate right of action against the party so signing, but that the firm were liable. *Buckley, ex parte, in re Clarke*, 14 M. & W. 469. See *Hall v. Smith*, 1 B. & Cr. 407; 2 D. & R. 504, overruled.

#### REVERSION.

See *Estoppel*.

#### REWARD FOR APPREHENSION OF FELON.

*Action for.*—A hand-bill relating to a stolen parcel offered a reward of 100*l.* to whoever should give such information as should lead to the early apprehension of the guilty parties." Held, that the information must be given, not in mere conversation, but with a view to its being acted on, either to the person offering the reward, or to his agent, or to some person having authority by law to apprehend the criminal. And where the communication was first made by the plaintiff to C. in conversation, but the information was afterwards communicated to a constable jointly by the plaintiff and C., it was held that they ought to have joined in the action. *Lockhart v. Barnard*, 14 M. & W. 674.

Case cited in the judgment: *Leicester v. Walsh* 4 B. & Ad. 621; 1 N. & M. 418.

#### SALE.

See *Contract of Sale; Estoppel*.

#### SHERIFF.

1. *Omission to arrest.*—*Action where no pecuniary damage.*—If the sheriff, having a writ of execution delivered to him, unnecessarily delay putting it in force, an action on the case lies against him at the suit of the execution creditor, though no actual pecuniary damage has arisen from the default.

The measure of damages for such default is not necessarily the whole debt, but such a sum as the jury think equivalent to the real loss.

If there be no actual loss, still, in the case of final process, the plaintiff must have nominal damages.

It is sufficient, in such action, if the jury find that the sheriff could have executed the process, and omitted doing so; it need not be expressly found that he ought to have executed it. *Clifton v. Hooper*, 6 Q. B. 468.

Cases cited in the judgment: *Williams v. Mostyn*, 4 M. & W. 145; *Marzetti v. Williams*, 1 B. & Ad. 415; *Planch v. Anderson*, 5 T. R. 37.

2. *Liability for erroneous representation.*—Case by the plaintiffs as sheriff of Middlesex, against the defendants as attorneys of one Power, for falsely representing to the plaintiffs that one J. W., who was then in their custody as sheriffs, and entitled to his discharge, was another J. W., against whom the defendants, as attorneys for the said Power, had sued out a

writ of ca. sa., and delivered the same to the plaintiffs, by reason whereof the plaintiffs wrongfully detained the first-mentioned J. W., and were afterwards obliged to pay 10*l.*, and the costs of an action commenced against them by him for the unlawful detainer. The declaration, after stating the delivery of the writ to the plaintiffs, and that the J. W. then in their custody was not the same person as the J. W. mentioned in the writ, and that he was entitled to his discharge, went on to aver that the defendants, well knowing the premises, and for the purpose of preventing the plaintiffs from discharging the said J. W., made the false representation.

Held, (on error in the Exchequer Chamber, reversing the judgment of the Court of Queen's Bench,) that a plea alleging that defendants had reasonable and probable cause to believe and did believe their representation to be true, was an answer to the action. *Collins v. Evans*, 1 D. & M. 669.

Cases cited in the judgment: *Parley v. Freeman*, 3 T. R. 51; *Haycraft v. Cressy*, 2 East, 92; *Humphreys v. Pratt*, 5 Blight, N. S. 154.

3. *Liability for erroneous arrest.*—Held, in the Exchequer Chamber, (reserving the judgment of the Queen's Bench:) No action lies against the sheriff or his officer for arresting a person attending court as a witness, although it be alleged that the defendants knew that he was privileged, and arrested him maliciously. And for maliciously detaining him after the court had ordered his discharge, and the defendants had notice thereof, *quare*, if any action lies, but, at all events, if any, it would be trespass, and not case. *Magnay v. Burt* 1 D. & M. 652.

Cases cited by the court: *Cameron v. Lightfoot*, 2 W. Bl. 1190; *Tarlton v. Fisher* and others, 2 Doug. 671; *Anon.* 11 Mod. 79.

And see *Money had and received*.

#### SPECIFICATION.

See *Patent*, 1.

#### STOPPAGE IN TRANSITU.

*Delivery of goods, when complete.*—*Bill of lading.*—*Invoice.*—B. sold to A. wheat, the price to be paid by banker's draft on London at two months, to be remitted on receipt of invoice and bill of lading, which B. shipped by order of A., to be carried to M. for the amount and at the risk of A., there to be delivered to A.; B. delivered the wheat to the master of the vessel, who took possession thereof; the master signed a bill of lading to deliver the wheat to the order of B., who indorsed such bill of lading to A., and made an invoice, and sent the invoice and bill of lading to A. in a letter, requiring A. to remit in course, which letter, with the invoice and bill of lading, were received by A. A. having received the bill of lading and invoice, and having failed to remit the banker's draft, B. assumed to revoke and rescind the sale, and caused the wheat to be stopped in its passage to A., &c.

Held, reversing the judgment of the Court of



Common Pleas, that by the delivery of the wheat to the master of the vessel for the account and at the risk of *A.*, and the transmission of the indorsed bill of lading, *B.* had so parted with the property and right of possession, as not to be entitled to interrupt the delivery.—*Wilmshurst v. Bowker*, 7 M. & G. 882.

Case cited in the judgment : *Clement v. Lewis* 3 Bro. & B. 297 ; 7 J. B. Moore, 200.

#### TIMBER.

See *Landlord and Tenant*.

#### TITHES.

*Modus, validity of.*—A modus, that in lien of tithes arising out of lands in the occupation of any person *not inhabiting* within the parish, there should be a customary payment of 1s. per acre, and where the lands are in the occupation of a person *inhabiting* within the parish, there should be a like payment of 6d. per acre, is good.—*Bridgewater, Mayor, &c. v. Allen*, 14 M. & W., 393.

Case cited in the judgment : *Chapman v. Bishop*, of Lincoln, 2 Eagle & Y., Tithes Ca. 11 ; 2 P. Wms. 565.

#### TITLE DEEDS.

See *Trover*, 2.

#### TRANSFER OF DEBTS.

The plaintiff, a merchant at Sunderland, having given an order to *B.* and Co., at Dantzic, for a cargo of wheat, wrote to request that *B.* and Co. would hold it at the disposal of the defendants, merchants of Liverpool, who would lodge the necessary credits for the remaining balance, and communicate to the defendants. A few days afterwards, and before the wheat was shipped from Dantzic, the plaintiff wrote to the defendants as follows :—"We request you will account to Mr. J. S. of Newcastle for the proceeds of the wheat we have consigned to you, lying at Dantzic, in Messrs. *B.*'s possession, which we wrote about to you a few days ago." The defendants assented to this order, and informed *S.* (who was largely indebted to them) that they held the wheat to his account ; and on its arrival, they rendered accounts of the sale of it to *S.*, and placed the balance of the proceeds to the credit of his account with them :—*Held*, that the plaintiff's order to account to *S.* was an order transferring the proceeds to him, and not a mere order to pay him, and was not revocable after the defendants had acted upon it.—*Dickinson v. Marrow*, 14 M. & W., 713.

See *Waste*.

#### TREES.

#### TROVER.

1. *Distress.—Judicial notice.*—*Implements of husbandry.*—*Trover* for hay, corn, carts, horses, &c. ; tables, carpets, chairs, &c. Plea justifying the taking of the goods under a distress for rent. Replication, that the goods were beasts of the plough and implements of husbandry, and that there was other available distress :—*Held*, on special demurrer, that the

court would take notice that several of the articles enumerated in the declaration could not possibly be beasts of the plough or implements of husbandry ; and that the replication was therefore ill.—*Davies v. Aston*, 3 D. & L., 188.

2. *Right to title-deeds.*—By marriage settlement, lands were settled on the husband for life, with a joint power of appointment in the husband and wife. They mortgaged the land, with all title-deeds, to *A.* for a term, and delivered the deeds to him. *M. D.* paid off the mortgage, and took an assignment of the premises from *A.*, the first mortgagee, but without mention of title-deeds, and *M. D.* never demanded them. *A.* afterwards gave up the deeds to the husband, and he deposited them with the defendant's solicitors, as collateral security for mortgage money which he owed their client. Afterwards, the husband and wife mortgaged the settled lands in fee, subject to the term, without mention of title-deeds ; and they executed the power of appointment by giving a like power to the wife alone. The husband died, and the wife appointed to herself in fee. She then offered defendant to pay the debt due from her late husband to their client, on receiving back the title-deeds, denying, however, that she was liable for such payment ; but the defendants refused to deliver them unless they were paid also their own charges for business done for their client in respect of the mortgage to him.

In *trover* by the wife against defendant for the deeds, *Held*

1. That the delivery of the deeds by *A.* to the husband was a rightful delivery, and caused to the benefit of the husband and wife during their joint lives, and afterwards of the wife as appointed under the power.

2. That the wife was entitled to hold as against the mortgagee in fee, having an interest in them in respect of her equity in redemption, no mention being made of them in the conveyance in fee, and the deed never having been handed over to the mortgagee in fee.

3. That, even if this were not so, the defendants could not set up the right of the mortgagee in fee.

4. That this action will lay against the defendants, though they held the deeds only as solicitors.

5. That the demand, accompanied by an offer to pay, was sufficient, though plaintiff at the same time denied her liability.

6. That the refusal to give up the deeds except on condition, which defendants had no right to impose, that their charge in respect of business done for their own client should be paid, was evidence of a conversion. *Davies v. Vernon*, 6 Q. B. 443.

Cases cited in the judgment : *Yea v. Field*, 2 T. B. 708 ; *Wiseman v. Westland*, 1 Y. & J. 117 ; *Perkins v. Smith*, 1 Wills. 328 ; *Cumack v. White*, 1 N. C. 414 ; see *Walsford v. Newbon*, 6 Q. B. 376.

#### WASTE.

*Cutting down willow trees.*—*Lessee* for years cutting down willows, and leaving the stools

or butts, from which they will shoot afresh, is not waste, unless they are a shelter to the house, or a support to the bank of a stream against the water. *Phillippe v. Smith*, 14 M. & W. 589.

Cases cited in the judgment: Lord Darcy v. Askwith, Hob. 234; Barrett v. Barrett, Hetley, 35.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Court of Chichester.

*Ex parte Philpott, in re Miskin.* July 22.

BANKRUPT'S FIAT AGAINST HIMSELF.

A debtor assigned his property for the benefit of his creditors. Subsequently, and when there was not any creditor, of sufficient amount, who could issue a fiat, the debtor, under § 41 of the 7 & 8 Vict. c. 96, sued out a fiat against himself.

Held, that the assignment was valid notwithstanding the fiat.

Whether it would have been so, had there existed any creditor competent to issue the fiat, *QUERRE?*

THIS was the petition of trustees under a deed which had been executed by the bankrupt, in favour of his creditors, six months prior to the issuing of a fiat against himself, at his own instance, under 7 & 8 Vict. c. 96. The object of the petition was to obtain a declaration of court in favour of the validity of the deed, the petitioners expressing their willingness to act in accordance with the direction of the court.

Chancellor, for the petitioners. When the fiat issued upon the bankrupt's own declaration of insolvency, it could have no relation to any prior act of bankruptcy. If any creditor assented to the deed, it was not an act of bankruptcy as against him. There is no reason for holding that the bankruptcy should defeat the prior assignment. (*Tosse v. Boclim*, 7 B. & C. 101. *Burbridge v. Watson*, 4 Car. & P. 170.)

Swanston for the assignees. The title of the assignees relates back to the date of the deed of assignment, which was, of itself, an act of bankruptcy. *Simpson v. Sikes*, 6 M. & S. 295. *Tappenden v. Burgess*, 4 East, 230.

Sir J. Knight Bruce, C. J.—My impression is, that it is not necessary to give any opinion, and I abstain wholly from giving any, how this matter would have stood, if, when this fiat issued, there had been a creditor, or any number of creditors, capable of issuing a fiat, founded upon this bankruptcy. I leave that point undecided. But, I am of opinion, that as, when this fiat issued, there was not any creditor, nor any number of creditors, who could have issued a fiat, founded upon this deed, as an act of bankruptcy, I must hold this deed good as against the fiat, although issued

by the bankrupt. If the assignees would like to bring an action to try the question, I will not preclude them. If they do not wish to have that opportunity, then I must call upon them to refund. If they think they can maintain an action for any of the sums, I will put the parties in a position, by admissions, to try it.

Swanston said the assignees had no wish to try an action.

Chief Judge.—Then I declare the deed valid without any question or prejudice, as to the effect of it. Each of the parties must bear their own costs, but, if the estate does not realize sufficient to pay the assignees' costs, they must be paid out of the trust fund.

## CHANCERY CAUSE LIST.

Master of the Rolls.

Michaelmas Term, 1846.

FIRST DAY OF TERM.—MOTIONS.

(JUDGMENTS reserved.)

Earl Nelson v. Lord Bridport, exons.  
Hulkes v. Beaucherk, cause.  
Lancaster v. Evers, Same v. Morley, cause.  
Fordyce v. Bridges, cause.  
Aicks v. Alvanley, plea.  
Harris v. Farwell, one point only.

PLEAS AND DEMURRERS.

Stand over, Dean of Ely v. Gayford, six pleas.  
Horaley v. Martin, dem.

CAUSES.

Last cause day, Walton v. Potter.  
First cause day, A. J. B. Hope v. Hope.  
Do. A. J. Hope v. Same.  
Do. H. J. Hope v. Same.  
S. O. to file suppl. bill, Hele v. Bexley, Same v. Same, exons. of defendant Donovan.  
Part heard, Augarand v. Parry.  
Part heard, Hodgkinson v. Cooper, and exons.  
Part heard, Churchman v. Capon, fur. dir. and costs.  
Barnes v. Hastings.  
Hargrave v. Hargrave.  
Clark v. Chuck.  
Bagshaw v. Parker, Same v. Same.  
1st Cause day, Smuritt v. Bigge.  
Hamilton v. Samle, Samler v. Hamilton.  
Howard v. Howards.  
Gustand v. Richards.  
Carpmael v. Powis.  
Reynell v. Reynell, Same v. Boom, fur. dir. and costs.  
Filbey v. Filbey.  
Perry v. Meddowcroft, Same v. Lester, Meddowcroft v. Meddowcroft, Lester v. Few, Meddowcroft v. Few, Same v. Lester, Perry v. Triston, Same v. Hagrenin, Same v. Steele, exons. and petitions.  
Robinson v. Wall, Same v. Whittle.  
Knights v. Stanton.  
Attorney-General v. Magdalen College, Oxford.  
Teistle v. King's College.  
Attorney-General v. Ludlow.  
Hopkinson v. Ellis, Same v. Kayvett, fur. dir. and costs.  
Ottley v. Gray.  
Allfrey v. Allfrey.  
Same v. Same.

Willis v. Douglas.  
 Baker v. Gibson, Same v. Pearson, fur. dirs. and costs.  
 Onely v. Anstruther, exons. 3 sets, and fur. dirs. and costs.  
 Culahs v. Cheese, fur. dirs. and costs.  
 Hubbard v. Young, Drewry v. Davies, Same v. Drewry, fur. dirs. and costs and petition.  
 Stratford v. Retson, fur. dirs. and costs.  
 S. O. to present petition, short, Woods v. Wood.  
 To present petition, Stourton v. Jerningham.  
 Kendall v. Granger, Same v. Same, Same v. Car-bew, fur. dirs. and costs.

## NEW CAUSES.

Thompson v. Clive.  
 Haybittle v. Parker, Same v. Merchant.  
 Pole v. Wakeman.  
 Hills v. Nash.  
 Elderton v. Lock.  
 Attorney-General v. Churchill.  
 William v. Griffiths.  
 Connell v. Ward, Perring v. Same.  
 Pooley v. Majoribanks, Same v. Walbrook.  
 Madeley v. Harborne.  
 Lund v. Noville.  
 Richardson v. Hastings.  
 Wheatley v. Wheatley.  
 Kilner v. Leech, Same v. Day, fur. dirs. and costs.  
 Turner v. Hudson, Same v. Same, Same v. Scott, Same v. Greatwick, fur. dirs. and costs.  
 Gardler v. Gardler, fur. dirs. and costs.  
 Pattison v. Hawkesworth.  
 1st Cause day, Brown v. Home, pro confesso.  
 Cozens v. Green.

## CHANCERY SITTINGS.

Michaelmas Term, 1846.

## Master of the Rolls.

AT WESTMINSTER.

Monday	Nov. 2	Motions.
Tuesday	3	Petitions—unopposed first.
Wednesday	4	
Thursday	5	
Friday	6	Pleas, Demurrers, Causes,
Saturday	7	Further Directions, and
Monday	9	Exceptions.
Tuesday	10	
Wednesday	11	
Thursday	12	Motions.
Friday	13	
Saturday	14	Pleas, Demurrers, Causes,
Monday	16	Further Directions, and
Tuesday	17	Exceptions.
Wednesday	18	
Thursday	19	Motions.
Friday	20	Pleas, Demurrers, Excep-
Saturday	21	tions, Causes, and Fur.
Monday	23	Dirs.
Tuesday	24	Petitions—unopposed first.
Wednesday	25	Motions.

Short Causes, Consent Causes, and Consent Petitions, every Saturday at the sitting of the court.

NOTICE.—Consent Petitions must be presented, and copies left with the secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

## COMMON LAW SITTINGS.

## Queen's Bench.

Is and after Michaelmas Term, 1846.

MIDDLESEX.

In Term.

1st Sitting—Tuesday . . . . . Nov. 3  
 And two following days at Eleven o'clock.  
 2nd Sitting, Friday . . . . . Nov. 6  
 And subsequent days at Eleven o'clock.  
 3rd Sitting, Monday . . . . . Nov. 23  
 At  $\frac{1}{2}$  past Nine o'clock precisely, for Unde-fended Causes only.

A list of such remanets as appear fit to be tried in Term will be printed immediately, but on the statement of either side that a cause is too long to be tried in Term, it will be withdrawn from such list, provided the other side have two days' notice of the application at the Marshal's to postpone, and do not oppose the application on good grounds—the usual number of completed and new causes will be put into the list day by day in their usual order.

Sittings after Term, Thursday . . . Nov. 26

LONDON.

In Term.

Tuesday (At Ten) . . . . . Nov. 24  
 For Unde-fended Causes and such as the Judge considers fit to be taken.

After Term.

Friday . . . . . Nov. 27  
 (To adjourn.)

## THE EDITOR'S LETTER BOX.

A. B. inquires of our election readers whether it is now requisite to pay the 1s. on delivering notice to the overseer of a claim to vote, and, if not, by what act it has been repealed.

G. J. asks whether by any recent enactment the decrees of the Court of Chancery can be enforced in *personam* against a party residing in the Isle of Man or in the Channel Islands?

The point relating to the case *ex parte* Reynolds shall be inquired into.

The queries of V. L. on the 91st section of the Small Debts Act shall be considered.

Reference was made in our last No. p. 521, to the 95th instead of the 91st section of the Small Debts Act, but the section itself was correctly given in page 523.

Information for the Legal Almanac, Remembrancer and Diary for 1847 should be sent soon.

The point raised by "Vindex" is important and shall be noticed in our next Number.

We cannot undertake the responsibility of advising T. T.—he should consult his counsel.

The Dramatic Work with which we have been favoured by a member of the profession, shall be noticed if practicable.

T. J. is referred with regard to Contracts on Sundays to 29 Car. 2, c. 7, and the following cases:—*Drury v. Defontaine*, 1 Taunt. 131; *Bensley v. Bigbold*, 5 B. & A.; *Rez v. Younger*, 5 T. R. 449; *Smith v. Sparrow*, 4 Bing. 34; 2 Car. & P. 544.

# The Legal Observer.

SATURDAY, OCTOBER 17, 1846.

—“Quod magis ad nos  
Pertinet, et noscere malum est, agitamus.”

HORAT.

## PRINCIPLES OF THE NEW SMALL DEBTS ACT.

We cannot presume to anticipate in what spirit the judges of the common law courts will undertake the onerous duty, imposed on them by the 78th section of the late statute, in framing rules and forms for regulating the practice and proceedings in the new courts. It is difficult to suppose, however, that those learned personages should regard as the labour of love a task which renders them instrumental in carrying out a system so decidedly at variance in its principles and details with that which they have themselves been administering during the whole of their judicial lives, and are to continue to administer as judges of the superior courts at Westminster. It requires considerable elasticity of mind, and no ordinary powers of adaptation, to frame a code of practice for courts established on the supposition that different and antagonistic principles are conducive to the ends of justice when the subject matter in dispute is under 20*l.*, or above that amount! The fundamental doctrine of British law, and that which renders it identical with constitutional liberty is, that its principles are equally applicable and indiscriminately applied to the cases of rich and poor.

The act of last session, however, proceeds upon the assumption, that in actions for small demands the parties are generally unable or unwilling to defray the expenses incidental to the administration of justice where the matter in dispute is of greater pecuniary value. It is perhaps correctly assumed, that the great proportion of suitors who litigate in respect of claims under 20*l.*, are to be found amongst the least opulent classes. We can there-

fore understand why it may be beneficial to suitors of this description to modify the course of procedure in the superior courts, in order to render it as little expensive as possible, whilst it is compatible with the previous investigation of facts, which is the only safe foundation for judicial decision. But we are at a loss to conceive, why its framers should deem it necessary to introduce into the new act provisions which do not tend to diminish expense, and yet are in direct contravention of the principles which experience has established as most conducive to the purposes of justice as administered in Westminster Hall.

We should have supposed that a measure essentially experimental and materially affecting the rights and interests of the least affluent classes, was not the most appropriate medium for the introduction of legal novelties which are wholly irrespective of, if not inconsistent with, the main objects of the act. To adopt the slang of the day, “cheap law for the million” was the professed object which the framers of the act had in view, but is it calculated to render the boon more acceptable, that the poorer suitor should find at every step that his case is to be dealt with in a mode wholly dissimilar to that in which the claims of his richer neighbours are treated? Why should the poor man’s case be tried in a court where the judges and officers are paid by *fees* and not by fixed stipends? This system formerly prevailed to some extent in the courts of law,—it was supposed to have led to corruption and abuse,—it was therefore condemned and abolished in those courts, but continued to prevail in Courts of Request and other inferior jurisdictions where its existence is a source of well-founded dissatisfaction and complaint.

c c

Again, where the determination of questions of fact are submitted to a *jury*, the public mind has been familiarised to the idea of a jury constituted in a particular manner. Under the new act, where the matter in dispute exceeds £1., either party, upon payment of an additional sum, is allowed to indulge in the luxury of having his cause tried by a jury, but he is mistaken if he supposes he is to have a jury of twelve "good men and true," as in the superior courts. The substituted number in the new courts is five. It may be said that there is no particular virtue in the number twelve, and that five men are just as likely to deal correctly with any question of fact submitted to them. Be it so. Why is it deemed expedient then to continue to require twelve men in cases where £1. or any greater sum is at issue? In important causes special jurors, persons of a higher degree of education and intelligence, are required to serve on juries, and yet in such cases twelve persons of this class must concur in a verdict, whilst in a cause involving, perhaps, matter of equal importance to the suitor in the new courts, although not of equal pecuniary magnitude, five common jurors only are allowed.

By the 76th section of the new act, in certain cases, a *notice of the intended defence* is to be substituted for the pleadings. The defences of which notice must be given are,—set off, infancy, coverture, the Statute of Limitations, bankruptcy, and discharge as an insolvent debtor. Where any other description of defence is intended to be relied upon, no notice need be given to the plaintiff, and the defendant, or his advocate, may come into court ready to avail himself of any other ground of defence which the evidence or his own ingenuity may suggest. We are ignorant why the instances above cited should have been exclusively selected as those in which a notice of defence was necessary. The framers of the act, and those who took charge of it during its progress through parliament, have never condescended to state, why a plaintiff is not equally entitled to notice of a defence founded on *payment or tender* before action, *release, accord and satisfaction, justification* in trespass, *denial of the plaintiff's right of property* in trover, and the numerous defences arising in actions of *bills and notes*. If the plaintiff's defence involve any of these defences suddenly started upon him when he proceeds to trial, he not involve the necessity of

increased expense, the result will be contrary to all the dictates of bygone experience.

The Reports of the Common Law Commissioners clearly demonstrated that in actions at law the costs occasioned by the pleadings were comparatively insignificant, and that the chief expense of a trial were occasioned by the outlay consequent upon the attendance of witnesses. To diminish this expense the New Pleadings Rules of Hilary Term, 4 W. 4, were framed by the judges with the avowed object of compelling the defendant to place on record the nature of the particular defence on which he relied, thereby relieving the plaintiff from the necessity of producing witnesses to depose to any fact not expressly put in issue by the plea. It has not been stated, as far as we can learn, that the new rules have been wholly inefficacious for the purpose for which they were devised, or that it is intended to rescind their operation in those actions which are to continue within the jurisdiction of the superior courts. If it be expedient or just that a defendant should be called upon previously to declare on what grounds of defence he relies, when the action is brought in the superior courts, in the name of common sense, why is he to be relieved from this obligation and an additional difficulty thrown on a plaintiff who is compelled to sue in one of the new courts?

The provision embodied in the 83rd section, under which the parties to an action and their wives are to be examined upon oath, either at the instance of the plaintiff or defendant, is so important and fraught with so many dangers social and moral, that we must defer the consideration of it as unfitted to our present limit.

We shall now only add, that the humbler classes of our fellow subjects are not remarkable for the sudden passion for novelties. It is notorious that some of the public hospitals have been shunned by the poor because they supposed, rightly or wrongly, that they were there subjected to experiments from which the wealthier were exempt. It would not be surprising to find the same aversion manifested as regards cheap law experiments. At all events, it is to be hoped, that the tribunals about to be established will not operate to widen the distinction or increase the estrangement between rich and poor; and above all, that their proceedings will not be conducted in such a manner as to diminish that respect for and confidence in the ad-

ministration of the law, which has hitherto been a distinguishing feature in the national character.

## CASES IN BANKRUPTCY.

### AFFIDAVIT OF DEBT DUE BY TRADER DEBTOR, UNDER THE 5 & 6 VICT. C. 122.

THE Commissioners of Bankruptcy at Basinghall Street have determined in several cases, that if a trader debtor, summoned under the 5 & 6 Vict. c. 122, s. 11, fail to attend personally at the time appointed, the commissioner is not bound to entertain any objection taken on behalf of the debtor, as to the sufficiency of the affidavit of debt, or the regularity of the particulars of demand, summons, and other proceedings. According to the report of a case lately decided in the Court of Review, however,\* it would appear, that the chief judge of that court takes a more enlarged view of the duty of the commissioners.

In the case referred to, in order to establish a compulsory act of bankruptcy, Geo. Greenstock was served at the instance of a creditor with particulars of a demand under the statute, alleging that the debt arose from returned bills. The creditor made an affidavit in the form given in the schedule of the act, No. 1, and in this affidavit described the debt as "for goods sold and delivered," by the creditor to the debtor. This affidavit having been filed in the District Court of Bankruptcy at Bristol, where the debtor resided, he was summoned to appear before the commissioner there, in pursuance of the act, but failed to appear at the time and place appointed. The creditor and his attorney, however, appeared, and made the usual affidavit of personal service, which was filed with the proceedings. The creditor not having been paid or satisfied within fourteen days after service of the summons, assumed that an act of bankruptcy had been committed, and issued a fiat against Greenstock. The case came before the Court of Review, upon a petition by Greenstock to annul the fiat on the ground that there was a fatal variance between the particulars of demand and the affidavit, the former alleging the debt to arise from bills returned, and the latter from goods sold

and delivered. On the part of the petitioning creditor it was argued, that the proceedings in the Court of Bankruptcy were regular, and even if they had been irregular, that the irregularity was waived by the nonappearance of the bankrupt before the commissioner upon the return of the summons.

Sir J. L. Knight Bruce said, there could be no act of bankruptcy unless the trader was summoned as the act directed. Now the act required that the creditor should file an affidavit in the Court of Bankruptcy of the truth of his debt in the form specified in the schedule, and should deliver to the trader personally an account in writing of the particulars of his demand, which must mean the same demand as the debt. With regard to the argument, that the variance was waived by the debtor's non-appearance, his Honour, the Chief Judge, adverted to the terms of the rules and orders in bankruptcy issued Nov. 1842. The 33rd rule was as follows:—

"Any want of compliance of the plaintiff (creditor) with these rules and orders, in the particulars of demand and notice, and in the affidavit for summoning the defendant (debtor), and in the summons and service thereof, or in any or either of such matters, may be waived by the defendant, or if made known to and proved to the satisfaction of the court, at the time required by the summons for the appearance of the defendant, shall be deemed and taken to be a good objection to requiring the defendant to state whether or not he admits the demand sworn to by the plaintiff, and, in such case, if such want of compliance be not waived, the defendant shall be entitled to his discharge."

Now, in considering the language of this rule, the learned judge said, it was to be observed, it did not say, if made known to and proved to the satisfaction of the court by the person called the defendant; but if made known to and proved to the satisfaction of the court generally. It did not say, at the time of the appearance of the defendant, but at the time required by the summons, seeming, therefore, tacitly to include a provision, that non-appearance of the defendant was not to be sufficient to exempt his adversary from the necessity of satisfying the court that all that had been done by the creditor was rightly done. The regularity of the proceeding was to be made apparent to the commissioner whether the alleged bankrupt appeared or not, and his non-appearance did not render it incumbent on the commissioner to assume that the proceeding was regular, or

\* *Ex parte Greenstock, in re Greenstock*, 15 Law Jour. 5, Bank. Cas.

no objection made by the alleged bankrupt. The proper course was to bring the documents under the attention of the commissioner. If the provisions of the act had not been complied with, there was no jurisdiction against the bankrupt;—there was nothing for him to appear upon, and he had a right to treat the whole proceeding as null. A man who does not appear on a vicious proceeding, was not to be held to have waived the objection which was the justification for, and legitimate cause of, his non-appearance. Upon these grounds the fiat issued against Greenstock was declared invalid, and ordered to be annulled accordingly.

Upon the construction of the act and rules, as explained in this judgment, it would seem to be the duty of the commissioners of bankrupt to entertain any objection to the proceedings under the act, whether made in the presence of the alleged bankrupt, or by any one on his behalf! Indeed, it would seem to be the duty of the learned commissioners to examine the documents in the same manner as they do the depositions upon opening a fiat; but we understand, from those conversant with the practice, that no such course is now pursued in the Court of Bankruptcy.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### INCLOSURE OF LANDS.

8 & 9 VICT. C. 117.

An Act to authorize the Inclosure of certain Lands, pursuant to a special Report of the Inclosure Commissioners for England and Wales. [26th August, 1846.]

8 & 9 Vict. c. 118.—9 & 10 Vict. c. 16.—*Inclosures mentioned in schedule to be proceeded with according to provisions of 8 & 9 Vict. c. 118, &c.* Whereas by an act passed in the last session of parliament, intituled "An Act to facilitate the Inclosure and Improvement of Commons and Lands held in common, the Exchange of Lands, and the Division of intermixed Lands; to provide Remedies for defective or incomplete Executions, and for the Non-execution, of the powers of general and local Inclosure Acts; and to provide for the Revival of such Powers in certain Cases," it was enacted, that certain waste lands therein specified should not be inclosed under that act without the previous authority of parliament in each particular case, as therein provided, and that the inclosure commissioners should in the month of January in every year send to one of

the principal Secretaries of State a general report of their proceedings, specifying the cases in which they should be of opinion that proposed inclosures which could not be made without the direction of parliament would be expedient, and that every such report should be laid before both houses of parliament within six weeks after the receipt of the same by such principal Secretary of State, if parliament be sitting, or if parliament be not sitting, then within six weeks after the next meeting of parliament; and it was also thereby enacted, that such commissioners might from time to time send to one of the principal Secretaries of State such special report in relation to all or any of the matters therein aforesaid as they might think fit: And whereas the said commissioners did on the thirty-first day of January last send to one of her Majesty's principal Secretaries of State their first annual report, specifying certain cases in which they were of opinion that proposed inclosures which could not be made without the direction of parliament would be expedient, and thereupon an act was passed in this session of parliament, intituled "An Act to authorize the Inclosure of certain Lands in pursuance of the Recommendation of the Inclosure Commissioners for England and Wales," whereby it was enacted, that the said several proposed inclosures mentioned in the schedule to the last-recited act be proceeded with: And whereas the said commissioners did on the twenty-seventh day of July last send to the said Secretary of State a special report, setting forth their proceedings as to the cases of inclosure (fifteen in number) requiring the previous authority of parliament, to which the proper assents to the provisional orders have been given since the date of their said annual general report up to that time, specifying such matters with respect to them, and annexing the same form of schedule as if they had been contained in an annual general report, which several proposed inclosures are mentioned in the schedule annexed to this act: And whereas it is expedient, for the reasons set forth in the said special report of the commissioners, that these inclosures should be forthwith authorized by parliament, notwithstanding that they have not been specified in the annual general report of the said commissioners: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said several proposed inclosures mentioned in the schedule annexed to this act be proceeded with, and completed according to the provisions of the first-recited act, and on the terms and conditions in the provisional order of the commissioners specified in each case in that behalf, in like manner as if the said several proposed inclosures had been specified in the annual general report of the said commissioners, and that this act had been thereupon passed for directing the same to be proceeded with.

2. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

3. *Public Act.*—And be it enacted, That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such.

SCHEDULE TO WHICH THIS ACT REFERS.

Inclosure.	County.	Date of Provisional Order.
Walthamstow - - - - -	Essex - - - - -	15th April.
Kentisbury Down - - - - -	Devon - - - - -	14th January.
Wolston - - - - -	Lancaster - - - - -	25th April.
Tregeare Down and Redd Down - - - - -	Cornwall - - - - -	13th March.
Alkham - - - - -	Kent - - - - -	26th January.
Shinfield - - - - -	Berks and Wilts - - - - -	21st May.
Obley - - - - -	Salop - - - - -	6th May.
Wetheringsett Green - - - - -	Suffolk - - - - -	15th April.
Brockford Green - - - - -	Suffolk - - - - -	26th May.
Rockbeare - - - - -	Devon - - - - -	22nd April.
Heaswall Hills - - - - -	Chester - - - - -	18th May.
South Down - - - - -	Devon - - - - -	17th June.
Norwood Green - - - - -	Suffolk - - - - -	6th May.
Taunton Deane - - - - -	Somerset - - - - -	10th June.
Ellenborough - - - - -	Cumberland - - - - -	9th July.

COMMUNICATIONS ON THE SMALL DEBTS ACT.

We have received from a respected Correspondent, the following extracts from an able contemporary, who writes very freely, as well on the objectionable *patronage* conferred by the Small Debts Act, as on many *glaring defects* in its attempt to improve the administration of justice.

“The Small Debts Bill, now law, is a bold experiment. The Whigs framed it six years ago, and so certain were they at that time of having local judgeships to give away, that at and before the general election of 1841, many of their adherents were promised them. These promises Lord Cottenham will now have to fulfil. After the ejection of the Whigs, the measure lingered in the Home Office till the break-up of Sir Robert Peel’s administration, when we find it taken up with manifest eagerness by the new government, determined not to lose a second time the fine opportunity of rewarding partizans which it affords. In the hands of Sir James Graham, the appointment of local judges was proposed to be vested in the Lord-Lieutenants of the different counties—an arrangement that would not by any means suit the views of the present men, who took good care to concentrate the whole amount of patronage in the hand of a single individual. The Lord Chancellor has the disposal of all, and undertakes to provide suitable and competent judges for, it may be, a hundred district courts. To be sure, the parliamentary qualification being only seven years’ standing at the bar, is not difficult to be ascertained. A glance at the new list, with the date of the call annex-

ed, will enable his lordship to pick out the qualified candidates—party interest or electioneering services will do the rest.

“Lord Cottenham, we freely admit, enjoys the reputation with the public and the profession of being an able, pains-taking, and excellent equity judge; but, though responsible in a parliamentary sense, for the appointments, it would be absurd to believe that his colleagues will not claim a share in the fine field of patronage which the Small Debts Bill invitingly opens to them. We may safely conclude that the Home Secretary and the Attorney-General were not altogether disinterested in their advocacy of the measure. A dozen judgeships will be no unwelcome presents to have to bestow upon friends or followers; though, *why they so pertinaciously opposed the admission of fully qualified solicitors to these offices, we cannot for the life of us discover.*

“And now, having touched upon the most valuable part of the bill, in the estimation at least of its authors, let us see what improvements and facilities for the recovery of small debts and demands it seeks to establish. At the outset, we are free to admit that the law for the recovery of small debts was in a very unsatisfactory and discouraging condition. The bungling legislation of the last few years had rendered the enforcement of demands under 20*l.*, in the case of dishonest or reckless debtors, a hopeless task; and, beside, the number and variety of courts of request, and other inferior jurisdictions of the kind, were a disgrace to the legislature, and a mockery of justice. It was, consequently, an absolute necessity that something should be done to enable the small tradesman to recover debts due to him without the ruinous expense of an action in one of the superior courts at Westminster—without driving him to the machin-



ary of a writ, declaration, &c. &c., especially where he would be running the risk of throwing good money after bad. In such case, to tell a man that he might bring his action, was tantamount to a denial of justice, because the remedy pointed out was often worse than the disease. A cheaper, readier, and more accessible process was needed; which is, in other words, but saying, that a Small Debts Act was much wanted, and would be received as a boon by the country at large, were it framed with greater regard to the necessities of the country than to views of patronage.

"The bill gives cognizance of all debts and demands for sums under 20*l.* to these courts; and, also, actions of replevin in cases of distress for rent arrear, or damage *faïssant*, are to be brought without writ in the court held for the district where the distress was taken. It contains provisions also for the recovery of the possession of tenements under 50*l.* a year annual rent; the exception to this and the former clause being, where either party shall declare that a question of title to any corporeal or incorporeal hereditaments is involved. In that case the cause may be removed to one of the superior courts; but, in other cases triable by these tribunals, should the plaintiff proceed to bring his action in one of the superior courts, if a verdict under 20*l.* be found for him, he will get no costs, and should the verdict be against him, the defendant will be entitled to costs, as between attorney and client, unless in either case the judge shall certify on the back of the record that the action was fit to be brought. This stringent provision will undoubtedly have the effect of confining actions under 20*l.* to the local tribunals, which are armed under this act with formidable powers for the enforcement of their respective decrees."

"In one point, whether for good or evil time alone can tell, these courts differ from other tribunals—their judgments are declared to be final and conclusive between the parties. No appeal will be allowed from the decision of the local judge, however erroneous that may be, either in matters of law or fact, and in this way he will stand distinguished from the going judges of assize. It is not easy to reconcile this absolute confidence in the wisdom of one of these local judges with the strict scrutiny exercised over the acts and decisions of higher tribunals, where the ruling of a single judge may be impeached before the full court, and where the decision of the full court may be questioned in a court of error, and, finally, where the House of Lords may, as a last resource, be appealed to. This want of a power of appeal we at present hold to be a defect, for it removes one of the strongest motives for accuracy and carefulness in the investigation of law and fact, which could operate upon the mind of a judge of one of these local courts. As at present constituted, the judge will want the salutary fear of having his decision overhauled; and if so disposed, may get rid of plaintiffs in a very off-hand manner, without troubling himself much as to their real merit.

"But then it may be said the want of appeal will prevent litigation—so it will, as would the closing up of Westminster-hall, or any other summary mode of checking parties seeking justice through the machinery of the law. Why, for instance, should a party, seeking, say the balance of an account, or compensation for an assault or false imprisonment, be debarred the right of appealing from the judgment of an inferior to that of a superior tribunal? We see no grounds for such an infringement on the common law rights of suitors, be their demands under or over 20*l.*

The courts established under this law will have no cognizance of actions which involve questions of title, or the validity of devises and bequests, or for malicious prosecution, libel, slander, criminal conversation, seduction, or breach of promise of marriage. They are to be held at least once in every calendar month, and oftener if occasion requires, and will be bound by no formal rules of pleading or evidence. Parties to the suit and their wives may be examined, and all pleas in abatement will be done away with. The general principle is that a plaint be entered, stating the nature and the amount of the debt sought to be recovered—copy to be served on defendant—the plaintiff will be allowed to give no evidence of any other cause of action—and defendant, if he or she means to plead set-off, infancy, coverture, statute of limitations, or discharge under the insolvent debtors' act, will have to give notice beforehand of his intention to the plaintiff. Beyond these regulations all the proceedings are to be conducted without regard to legal technicalities or niceties of any kind.

Only barristers and attorneys will be allowed to appear; and, in cases over 5*l.* either party may demand a jury of five. It is proposed, in the first instance, that all the officers under the act should be remunerated by fees; but, that is clearly by way of experiment, the better to ascertain the relative amounts of the work in different districts, in order hereafter to apportion the salaries accordingly. The principle is a bad one, and never should have been adopted.

The courts are empowered to issue warrants of execution, to commit for contempt, and, upon summons, to imprison debtors tainted with fraud for forty days, but so as not to extinguish or in any manner to satisfy the debt.

These are the main provisions of the bill, and it will be seen, we think, that many of them are, in theory, at least, of a very stringent nature. However, the great blemish and pervading defect of the measure we hold to be, as we before stated, the absence of an appeal to a superior tribunal. Cheap law is dearly purchased if attended with manifest risk of injustice, and no means of redress. And we have not yet arrived at the conclusion that barristers of seven years' standing are not liable, like other mortals, to errors and mistakes; nor do we see any adequate reason why there should not be an appeal from their decisions, as from the decisions of the judges of the land." *The Newcastle Journal of 5th September.*

## THE LAW STUDENT.

No. 10.

## STUDIES AND EXAMINATION FOR THE BAR.

THE newspapers have reported a case which recently came before the magistrates at Guildhall, wherein a person named *Poyser* is alleged to have practised as a barrister without any legitimate title to that character. The *Globe* of the 7th instant, after commenting on the case, adverts to the necessity of ascertaining that candidates for the bar are duly qualified before they are "called." For this purpose our contemporary urges the revival of the studies and exercises which were anciently enforced in the Inns of Court. We think it material to record these opinions of the press, indicating, as well on the part of the public, as the profession, the increasing demand for the adoption of a better system of legal education.

"Our readers" (says the *Globe*) "will bear in mind the remarks which we made a few weeks ago, on the subject of the resolutions passed by three of the great legal societies, and the arguments which we used to enforce the necessity of instituting an examination previous to a call to the bar. We pointed out the difference between the present practice of the Inns of Court, and that in more ancient times, when the students were obliged to study, and the proceeding to the degree of barrister was far from being a farce as it is now. It gratifies us much to quote the following passage from Lord Campbell's *Lives of the Lord Chancellors*. Speaking of the great Sir Thomas More, he says, (Vol. I., page 508) :—

"More had been destined by his father to wear the long robe, and having completed his course at Oxford, he was transferred to London, that he might apply to the study of the law. According to the practice then generally followed, he began at New Inn, an Inn of Chancery, where was acquired the learning of writs and procedure; and he afterwards belonged to Lincoln's Inn, an Inn of Court, where were taught the more profound and abstruse branches of the science. With us a sufficient knowledge of jurisprudence is supposed to be gained by eating a certain number of dinners in the hall of one of the Inns of Court, whereby men are often called to the bar wholly ignorant of their profession; and, being pushed on by favour or accident, or native vigour of mind, they are sometimes placed in high judicial situations, having no acquaintance with the law beyond what they may have picked up as practitioners at the bar. Then the Inns of Court and Chancery presented the discipline of a well constituted university; and through professors, under the name of *READERS*, and exercises, under the name of *MOOTINGS*, law was systematically taught, and efficient tests of proficiency were applied, before the degree of barrister was conferred, entitling the aspirant to practise as an advocate."

"Is it not strange that we should have de-

generated from the wisdom of our ancestors in the age of the Tudors?—that the Inns of Court should have discharged their duty in the reign of Henry VII., and should neglect it in the reign of Queen Victoria? Yet this is indisputably the fact. The noble writer from whose work the above extract is taken, is well aware that many men have even succeeded at the bar without much acquaintance with the doctrines of law, and that their success has raised them to high judicial situations. The common defence of the present system is, that no harm is done, because a man cannot succeed without legal knowledge. But Lord Campbell knows better, and we know better. Experience shows that a man may (as the noble lord says) "be pushed on by favour or accident or native vigour of mind," without much acquaintance with law. If the professional success of the man himself were alone concerned, no one could complain much, except, perhaps, some of his own clients; but, unfortunately, we know that success as an advocate leads often to a seat in parliament, to high connexion and influence, and by such means the clever but unlearned advocate is often raised to the bench, where his powers of advocacy are no longer required, but something of a more solid and profound description, in which he is found wanting. Thus, be it observed, the public is made to suffer by the elevation of such men, and the origin of the mischief is traceable to the negligence of the Inns of Court in admitting unqualified persons to practise.

"No doubt, public opinion operates in some degree as a check upon improper appointments to the very highest judicial stations; and yet even to the bench in Westminster we have known many elevations where the dexterous advocate has proved himself a most inefficient judge. But on the minor judicial appointments there is not the same check. Barristers of five, seven, or ten years' standing may be raised to a multitude of important posts, without any legal qualification whatsoever. Hundreds of men are called to the bar with no other object but to gain an appointment *by standing*; and whether they attain their object or not, depends on the influence they may happen to possess.

"We could not devise a better safeguard against the improper distribution of patronage, than a good and searching examination previous to the call to the bar. We heartily wish that Lord Campbell, who seems so fully alive to the importance of this subject, and so well understands all its bearings, would take it up seriously in the proper quarter."

## SELECTIONS FROM CORRESPONDENCE.

## MEDICAL EVIDENCE.

ON reading the communication of "C. F. C." contained in p. 468, of the *Legal Observer*, in the number published for the 12th September

ult., and considering the whole case to which it relates, I have felt much surprised, and for these reasons, viz., that the surgeon examined as a witness for the prisoner must, or ought, before he came into court, to have satisfied himself by testing the mixture of the ingredients, and if so, he would have used the same order of putting the same articles together, as suggested by the prisoner's counsel, or he could not (with any degree of propriety, at least,) have given his evidence; and if he made such test, then he appears to have forgotten the order of mixture, when he tested in the presence of the chemist and found the colour black; otherwise he would have said to the chemist, "Let us put in the water before the sugar," and in fact the chemist ought to have known the difference. But that part of the communication of "C. F. C." surprises me the most, wherein he supposes he saw in the surgeon, when he brought into court the black mixture, a feeling of *triumph* over the poor girl, in *establishing evidence of her guilt*. I ask, is it possible, that the man who a few minutes before had come forward as a witness in support of her innocence, should now *willingly* produce a proof of her guilt, and that, an evidence too, of his own ignorance in chemistry?

Sept. 21, 1846.

T. G. M.

## PARTNERSHIP ACCOUNT.

A. and B. are partners. The partnership is dissolved on the 1st January, 1839. A. receives the whole of the assets and refuses to account. Can a bill in equity for an account be maintained after the expiration of six years?

SCRUTATOR.

## COPYHOLD.—DEPUTATION.

IN answer to the letters of "Civis, A.," I beg to say, that except where the copyholder is under any personal incapacity, as *non compos*, coverture, or infancy, or possesses a bare power or authority to sell, a surrender may be made by attorney, as well as in proper person. A person, however, cannot surrender by attorney, where he cannot surrender in person without a special custom. And therefore, though he may surrender by attorney in court, or to the lord, or steward, out of it by attorney; yet he cannot surrender by attorney to two tenants, or to the bailiff or reeve of the manor, without a special custom to warrant it; for in these cases a special custom would be necessary to warrant the surrender of the copyholder himself, and therefore, a surrender by attorney would not be good without a further custom for doing so. The attorney must be appointed by deed; and he ought to pursue the usual customs as to form, and ought to make the surrender in the name of his principal, not in his own name; or show his authority, and say he surrenders the copyhold by force of such authority. But a purchaser of a copyhold is not obliged to accept of a surrender by attorney. 2 Tho. Co. Litt. p. 627, n.

TACITUM.

## LOCAL AND PERSONAL ACTS.

9 &amp; 10-VICTORIA.

DECLARED PUBLIC, AND TO BE JUDICIALLY NOTICED.

1. An Act for lighting with Gas the Town of Downpatrick in the County of Down.
2. An Act for lighting with Gas the Town and Parish of Radcliff and the Township of Pilkington, or Parts thereof, in the County Palatine of Lancaster.
3. An Act for better assessing and collecting the Poor Rates, Lighting and Watching, and Church Rates, in the Parish of Aylesbury, and the Highway Rates in the Township of Aylesbury and Hamlet of Walton respectively, in the County of Buckingham.
4. An Act for granting more effectual Powers for lighting with Gas the Town of Bury and the Neighbourhood thereof in the Parish of Bury in the County Palatine of Lancaster.
5. An Act to enable the United Company of Proprietors of the Ellesmere and Chester Canal to raise a further Sum of Money.
6. An Act for building a Bridge across the Medway at Rochester in the County of Kent, with approaches thereto; for taking down the present Bridge; and for amending the Acts relating to the same.
7. An Act for repairing, improving and maintaining certain Roads leading from the Borough of New Woodstock to Rollright Lane, and other Roads connected therewith, in the County of Oxford.
8. An Act for lighting with Gas the Town of Middleton and its vicinity in the County of Lancaster.
9. An Act for inclosing Lands in the Parish of Willingham in the County of Cambridge, and for draining and embanking certain Fen Lands and Low Grounds in the said Parish.
10. An Act to enable the Company of Proprietors of the Manchester and Salford Waterworks to raise a further Sum of Money.
11. An Act for altering, amending, and enlarging the Powers and Provisions of the several Acts passed in relation to the Monkland Navigation.
12. An Act for enabling the Trustees of the Enfield Chase Road to make a Deviation or Alteration of the said Road from a Point near the Sixteenth Milestone in the Parish of North Mims to the Town of Hatfield in the County of Hertford.
13. An Act for constructing a Wet Dock and other Works on the South Side of the River Wear at Sunderland-near-the-Sea in the County Palatine of Durham.
14. An Act to amend and enlarge some of the Acts relating to the Great Western Railway Company, and to confirm the Purchase of certain Railways by the said Company.
15. An Act for enabling the Taunton Gas Light and Coke Company, incorporated by the Taunton Gas Act, 1845, to borrow additional Money for the Purposes of the Company, and

for confirming a Purchase made by them; and for other Purposes.

16. An Act for improving and maintaining the Port and Harbour of Helensborough, in the County of Dumbarton.

17. An Act for better supplying with Water the City and Neighbourhood of York.

18. An Act to incorporate the Members of the Most Honourable and Loyal Society of Ancient Britons, commonly called The Welsh Charity School, and to enable them the better to carry on their charitable Designs.

19. An Act for better supplying with Water the Town and Environs of Boston in the County of Lincoln.

20. An Act for establishing a Cemetery at Birmingham in the County of Warwick.

21. An Act to enable the Company of Proprietors of the Glasgow Waterworks to introduce an additional supply of Water to the City and Suburbs of Glasgow.

22. An Act for providing an enlarged Site for rebuilding the Coal Market in the City of London, and for widening the Avenues in the Vicinity thereof, and for effecting other Improvements in the said City.

23. An Act for enabling the Parliamentary Trustees on the River Clyde and Harbour of Glasgow to acquire a Portion of the Lands of Stobcross and adjacent Grounds, and to construct thereon a Wet Dock or Tidal Basin, with certain additional Wharfs and other Works.

24. An Act for improving and maintaining the Harbour or Port of Sligo in the County of Sligo.

25. An Act for constructing a Pier, and forming necessary Approaches thereto in the Parish of Weston-super-Mare in the County of Somerset.

26. An Act for amending certain Acts of the Forty-third and Fiftieth Years of the Reign of His late Majesty, King George the Third, relating to the Port and Harbour of the Town and County of the Town of Southampton.

27. An Act for establishing a general Cemetery for the Interment of the Dead in the Neighbourhood of the Towns of Plymouth, Devonport, and Stonehouse, in the County of Devon.

28. An Act for altering, amending, and enlarging the several Acts relating to the Improvement of Birkenhead, Claughton-cum-Grange, and Part of Oxtou, in the County of Chester.

29. An Act for improving the Borough of Leicester.

30. An Act for paving, lighting, watching, watering, cleansing, regulating, and otherwise improving the Town of Southport in the County Palatine of Lancaster, and for establishing and regulating a Market and Market Places therein.

31. An Act for extending the Limits of the Borough of Helensburgh in the County of Dumbarton, for lighting and cleansing the same, for establishing a Police therein, and for other Purposes relating thereto.

32. An Act to erect and constitute the

Parishes of Old and New Monkland, and Parts of the Parishes of Bothwell and Shotts, in the County of Lanark, into One Police District, for the Establishment of an efficient Police Force therein, and for other purposes relating thereto.

33. An Act for incorporating the Gravesend and Milton Waterworks Company, and for more effectually supplying the Inhabitants of the Town and Parishes of Gravesend and Milton-next-Gravesend and the Parish of Northfleet in the County of Kent with Water.

34. An Act for granting more effectual Powers for supplying with Water the Town of Bury, and the several Townships of Walmer-sley-cum-Shuttleworth, Bury, and Elton, all in the Parish of Bury in the County Palatine of Lancaster.

35. An Act to amend the provisions of Two several Acts passed in the Third and Eighth Years of His Majesty King George the Fourth, for supplying with water the Town of Liverpool and Harrington and Toxteth Park in the County Palatine of Lancaster.

36. An Act for better supplying with Water the Town and Borough of Sunderland, and the Neighbourhood thereof, in the County of Durham.

37. An Act for better supplying with Gas the Town and Borough of Sunderland, and the Neighbourhood thereof, in the County of Durham.

38. An Act for incorporating the Rotherham Gas Light and Coke Company, and for better supplying the Parish of Rotherham in the West Riding of the County of York with Gas.

39. An Act to enable the Bilston Gas Light Company to light with Gas the Town of Bilston, and certain other Townships, Parishes, and Places in the County of Stafford.

40. An Act for better supplying with Gas the Townships of Bilton with Harrogate and Paenal, and certain Parts of the Townships of Knareborough and Scriven with Tentergate, adjacent thereto or intermixed therewith, all in the West Riding of the County of York.

41. An Act for constructing and maintaining an Arcade between Argyle Street and Great Clyde Street in the City of Glasgow, to be called "The Union Arcade," and for altering the Site of an intended Foot Passenger Bridge across the Clyde at Glasgow.

42. An Act for the better and more effectual ascertaining, assessing, collecting, and levying the Poor Rate, and all other Rates and Assessments, in the Parish of Carshalton in the County of Surrey, and for the better Management of the Business and Affairs of the said Parish; and for other Purposes relating thereto.

43. An Act to incorporate the Members of the Institution called "The Royal Asylum of the Saint Ann's Society," and to enable them the better to carry on their charitable Designs.

44. An Act for forming and regulating "The Electric Telegraph Company," and to enable

the said Company to work certain Letters Patent.

45. An Act for incorporating the "Caledonian Insurance Company," for enabling the said Company to sue and be sued, to take and to hold Property; for confirming the Rules and Regulations of the said Company; and for other Purposes relating thereto.

46. An Act for maintaining the Road from Deanburn in the County of Haddington, through Greenlaw in the County of Berwick, to Cornhill in the County of Durham, with Branches from Crafrae Mill through Lauder, from Orange Lane to Swinton, and from Coldstream to Mount Pleasant, all in the County of Berwick; and for maintaining the Bridge over the River Tweed at Coldstream.

47. An Act to enlarge the Term and Powers of an Act made in the Sixth Year of the Reign of His Majesty George the Fourth, for repairing and maintaining the Road from Whiteburn, upon the Turnpike Road from Edinburgh to Greenlaw, passing through Thornydyke and Westruther to Choicelee, upon the Turnpike Road from Greenlaw to Dunse, all in the County of Berwick.

48. An Act to alter, amend, and enlarge the Powers and Provisions of an Act passed in the Second and Third Years of the Reign of Her present Majesty, intituled "An Act for maintaining and regulating the Market in the Parish of Sidmouth in the County of Devon."

49. An Act for more effectually supplying Water to the Inhabitants of the Town of Bolton, and several Townships and Parishes adjoining or near thereto, in the County of Lancaster.

50. An Act for the better supplying with Gas the Royal Burgh of Dundee, Suburbs thereof, and Places adjacent, in the County of Forfar.

51. An Act to authorize certain Alterations in the Line of the Syston and Peterborough Branch of the Midland Railway, and the Formation of certain other Branch Railways in connexion therewith.

52. An Act for making a Railway from Maldon, through Witham, to Braintree, all in the County of Essex.

53. An Act for making a Railway from the Eastern Union Railway in the Parish of Bentley to the Town of Hadleigh, all in the County of Suffolk, to be called "The Eastern Union and Hadleigh Junction Railway."

54. An Act for making a Branch Railway from the London and Brighton Railway to or near to the Town of East Grinstead in the County of Sussex.

55. An Act to enable the South-eastern Railway Company to make and maintain a Railway from the Town of Rye to the Mouth of Rye Harbour.

56. An Act to enable the South-eastern Railway Company to construct an additional Station at Ashford in the County of Kent; and for other purposes.

67. An Act to amend and enlarge the Powers of the Acts relating to the Edinburgh, Leith, and Granton Railway.

58. An Act for enabling the Newcastle and Darlington Junction Railway Company to make a Railway from or near Thirsk to Malton, with a Branch to Hemsley.

59. An Act for enabling the York and North Midland Railway Company to extend the Line of the Whitby and Pickering Railway to or near Castleton.

60. An Act to enable the Glasgow, Paisley, Kilmarnock, and Ayr Railway Company to alter their Line near Kilmarnock, and to make Branches to Linwood, Swinlees, and the Kilmarnock and Troon Railway.

61. An Act to amend the Acts relating to the Glasgow, Paisley, Kilmarnock and Ayr Railway; and to authorize the Formation of Branches from Busby to Irvine, and from Irvine to the Harbour thereof, with a subsidiary Branch to Perceton Coalworks.

62. An Act to enable the Glasgow, Paisley, Kilmarnock, and Ayr Railway Company to make a Branch from their Railway near Blair to Strathaven; and to amend the Acts relating to such Railway.

63. An Act for making Railways from the Brighton, Lewes, and Hastings Railway to Eastbourne, to Hailsham, and to Seaford and Newhaven, and certain Deviations from the Line of the said Railway, all in the County of Sussex.

64. An Act to authorize the South-eastern Railway Company to make a Railway from Tunbridge Wells to join the Rye and Ashford Extension of the Brighton, Lewes, and Hastings Railway near Hastings.

65. An Act for enabling the York and North Midland Railway Company to make certain Branch Railways in the East Riding of the County of York; and for other purposes.

66. An Act for enabling the York and North Midland Railway Company to make certain Branch Railways in the East Riding of the County of York; and for other purposes.

67. An Act to empower the London and Birmingham Railway Company to make a Branch Railway from Rugby to the Syston and Peterborough Railway near Stamford.

68. An Act for making a Branch Railway from the Brighton and Chichester Railway to the Town of Littlehampton in the County of Sussex.

69. An Act for making a Branch Railway from the Brighton and Chichester Railway to the Town of Steyning in the County of Sussex.

70. An Act to enable the Edinburgh and Glasgow Railway Company to alter the Line of the Glasgow Junction Railway, and to form a Branch to South Queensferry.

71. An Act for making a Railway from London to York, with Branches therefrom providing for the Counties of Hertford, Bedford, Huntingdon, Northampton, Rutland, Nottingham, and the Three Divisions of the County of Lincoln a Railway Communication with London and York, to be called "The Great Northern Railway."

72. An Act to enable the Edinburgh and Northern Railway Company to purchase the

Ferry across the River Tay between Ferry-Port-on-Craig and Broughty.

73. An Act to empower the North British Railway Company to construct certain Branch Railways in connexion with the Hawick Branch of the North British Railway.

74. An Act to authorize the Construction of several Branch Railways and other Works in connexion with the North British Railway.

75. An Act to enable the Scottish Midland Junction Railway Company to make certain Branch Railways; and to amend the Acts relating to such Railway.

76. An Act for making a Railway from the Eastern Counties Railway at Marks Tey near Colchester to the Town of Sudbury in the County of Suffolk, and the Town of Halstead in the County of Essex, with a Branch Railway from the Eastern Union Railway to the Hythe at Colchester.

77. An Act for making a Railway from the Scarborough Branch of the York and North Midland Railway at Norton near Malton to the Bridlington Branch of the Hull and Selby Railway at Great Driffield, with a Branch therefrom.

78. An Act to enable the Arbroath and Forfar Railway Company to raise an additional Sum of Money; and to amend the Acts relating to the said Company.

79. An Act to enable the Edinburgh and Northern Railway Company to alter their Line of Railway near to Dysart, to make a Branch Railway from Kinghorn to the Harbour of Pettycur, and for other Purposes relating to the said Company.

80. An Act to empower the Manchester and Birmingham Railway Company to make a Branch Railway from Bollington.

81. An Act for making a Railway from Glasgow to Dumbarton and Lochlomond, and with branches to Helensburgh and other Places, to be called "The Caledonian and Dumbartonshire Junction Railway."

82. An Act for making a Railway from Oxford to the London and Birmingham Railway at Bletchley in the County of Buckingham.

83. An Act for making a Railway from the Croydon and Epsom Railway at Epsom to the Town of Portsmouth, to be called "The Direct London and Portsmouth Railway."

84. An Act for making a Railway from Harecastle to join the Manchester and Birmingham Railway at or near the Sandbach Station thereon.

85. An Act for making a Railway from the Manchester and Birmingham Railway at Macclesfield to the Trent Valley Railway at Colwich, with Branches.

86. An Act for making a Railway from the Manchester and Birmingham Railway at Macclesfield to join the Birmingham and Derby Line of the Midland Railways, with a Branch to Stoke-upon-Trent.

87. An Act for making a Railway from Belfast to Downpatrick, with Branches to the Towns of Holywood, Newtownards, Bangor, and Donaghadee, all in the County of Down.

88. An Act for making a Railway from Great Grimsby by Louth and Alford to Boston, all in the county of Lincoln, to be called "The East Lincolnshire Railway."

89. An Act for enabling the York and North Midland Railway Company to make a more direct Line of Railway between York and Leeds.

90. An Act for making a Railway, to be called "The Liverpool, Manchester, and Newcastle-upon-Tyne Junction Railway," with a Branch to the Town of Hawes.

91. An Act for making a Railway from the Chester and Birkenhead Railway to the Manchester and Birmingham Railway, with Branches therefrom, to be called "The Birkenhead, Lancashire, and Cheshire Junction Railway."

92. An Act for making a Railway from the Leeds and Bradford Extension Railway to the Lancaster and Carlisle Railway, with a diverging line therefrom to Lancaster, to be called "The North-western Railway."

93. An Act for making a Railway from the Line of the Syston and Peterborough Railway in the Parish of Helpstone, near to the Town of Stamford, to the Line of the Wisbech Branch of the Lynn and Ely Railway at or near to the Town of Wisbech, to be called "The Boston, Stamford, and Birmingham Railway."

94. An Act for improving and maintaining the Harbour of Port Ellen in the County of Argyll.

95. An Act for enabling the Newcastle and Darlington Junction Railway Company to make a Railway from the Line of the Great North of England Railway to or near to Boroughbridge.

96. An Act for enabling the Newcastle and Darlington Junction Railway Company to make a Railway from the Line of the Great North of England Railway to Bedale.

97. An Act to empower the Eastern Union Railway Company to complete the Eastern Union Railway from the Junction thereof with the Line of the Eastern Counties Railway at Ardleigh to Colchester.

98. An Act for making certain new Lines and Deviations in the Line of the Great Grimsby and Sheffield Junction Railway, and for constructing a Branch therefrom to the Town of Caistor, all in the Parts of Lindsey in the County of Lincoln.

99. An Act for enabling the Great Grimsby and Sheffield Junction Railway Company to make an extension from the Market Rasen Branch from the Great Grimsby and Sheffield Junction Railway to communicate with the City of Lincoln, and also a branch to the Town of Barton-upon-Humber, and other Works connected therewith.

100. An Act to authorize the Great Grimsby and Sheffield Junction Railway Company to make an Extension from their Line of Railway in the Parish of Bole in the County of Nottingham, to the Town of Newark-upon-Trent in the same County.

101. An Act for establishing a Steam Communication across the River Humber in connexion with "The Great Grimsby and Sheffield Junction Railway."
102. An Act to empower the Midland Railway Company to make a Railway from Eye Bridge to the Clay Cross Station of the Midland Railway, and a Branch in the Parish of Crich.
103. An Act for making a Railway from Aberdeen to Inverness, with Branches to Banff, Portsoy, Garmouth, and Burghead, to be called "The Great North of Scotland Railway."
104. An Act to enable the Ballochney Railway Company to improve the Gauge of their Rails.
105. An Act for making a Railway Communication between the City of Bristol and the proposed South Wales Railway in the County of Monmouth, with a Branch Railway therefrom.
106. An Act for amending an Act passed in the Thirtieth Year of the Reign of his late Majesty King George the Third, for making and maintaining a navigable Communication between Stowmarket and Ipswich in the County of Suffolk, so as to enable the Trustees of such Act to lease the said Navigation; and for other Purposes connected therewith.
107. An Act to enable the Slamannan Railway Company to make a Railway to Borrowstounness, with Branches to the Edinburgh and Glasgow Railway.
108. An Act for making a Pier from the Common Hard at the Eastern or Portsmouth Side of the Harbour of Portsmouth in the Parish of Portsea in the County of Southampton.
109. An Act for enabling the Trustees of the Liverpool Docks to construct additional Wet Docks and other Works, and to raise a further Sum of Money; and for extending and amending the Acts relating to the Docks and Harbour of Liverpool.
110. An Act for constructing Docks and other Works at Coble Dean in the County of Northumberland, and in the Borough and County of Newcastle-upon-Tyne, to be called "The Northumberland Docks."
111. An Act for better supplying with Water the Inhabitants of the City of Lincoln, and certain Parishes and Places adjacent thereto in the County of Lincoln.
112. An Act for the better supplying with Water the Town and Borough of Warrington, or Parts thereof, in the Counties of Lancaster and Chester, and the Townships of Latchford and Appleton in the last-mentioned County.
113. An Act for supplying with Water the Hamlets or Places of High and Low Harrogate in the several Townships of Knaresborough, Pannal, Bilton-with-Harrogate, and Scriven-with-Tentergate, in the Parishes of Knaresborough and Pannal in the West Riding of the County of York.
114. An Act for better supplying with Gas the Town and Borough of Stafford, and the several Parishes and Townships of Saint Mary and Saint Chad in Stafford, Castle Church, Hopton and Coton, and Tillington, all in the County of Stafford.
115. An Act for lighting with Gas and supplying with Water the Town of Hartlepool and the Neighbourhood thereof in the County of Durham.
116. An Act for better supplying with Gas and Water the Town and Parish of Keston in the County of Westmoreland.
117. An Act for lighting with Gas the Parish and Borough of Great Grimsby in the County of Lincoln.
118. An Act for supplying and lighting the Town of Hamilton and Places adjacent thereto with Gas.
119. An Act for better paving, lighting, cleaning, regulating, and improving the Town of Burnley in the County Palatine of York, and for better supplying the Inhabitants thereof with Water.
120. An Act to alter, amend, and enlarge the Powers and Provisions of an Act passed in the First Year of the Reign of Her present Majesty, intitled "An Act to enable the Mayor, Aldermen, and Burgesses of the Borough of Liverpool to open and widen certain Streets and Places, and otherwise to improve the same; and to enable the said Mayor, Aldermen, and Burgesses to appropriate certain Lands, Tenements; and Hereditaments for public Purposes, and also to erect public Buildings."
121. An Act for lighting with Gas the Borough of Newcastle-upon-Tyne, and for varying and extending the Powers of the several Acts for regulating and improving the said Borough.
122. An Act for paving the Footways in the Town of Sittingbourne in the Parish of Sittingbourne in the County of Kent, and for lighting the Streets, and for the Removal and Preventing of Nuisances and Annoyances within the said Parish.
123. An Act for widening, altering, and improving certain Streets within the City of York; and for other Purposes.
124. An Act for paving, cleansing, draining, and improving the Town of Bromsgrove, for opening a new Street therein and in the Parish of Stoke Prior, both in the County of Worcester, and for the better assessing and collecting the Poor, Church, and Highway Rates within the Parish of Bromsgrove.
125. An Act for regulating the Repair and Maintenance of the Roads and Streets within the Town of Leith, and the Assessments payable in respect thereof.
126. An Act for more effectually regulating the Salford Hundred Court, for extending the Jurisdiction and Powers of the said Court, and for establishing and constituting it as a Court of Record.
127. An Act for the Improvement of the Sewerage and Drainage of the Borough of Liverpool, and for making further Provisions for the sanitary Regulation of the said Borough.

[To be continued in our next Number.]

PARLIAMENTARY RETURNS.

WRITS OF SUMMONS.

Return to an Order of the Honourable the House of Commons, dated 29th May, 1846 ;—for

A Return of the Number of Writs of Summons issued out of the High Courts of Law, namely, the Queen's Bench, the Common Pleas, and the Exchequer of Pleas, between the 19th day of November, 1845, and the 10th May, 1846 ;—And also, the numbers issued out of the same Courts in the parallel Six Months of the Five preceding Years ;—Also, the Bills filed in the Courts of Equity during the same periods of time, distinguishing each Year. (So far as relates to Writs of Summons.)<sup>a</sup>

A Return of the Number of Writs of Summons issued out of the Court of Queen's Bench, under the Dates following :

D A T E S.	Number of Writs.
From the 10th day of November, 1840, to the 10th day of May, 1841 .	28,776
From the 10th day of November, 1841, to the 10th day of May, 1842 .	28,043
From the 10th day of November, 1842, to the 10th day of May, 1843 .	24,965
From the 10th day of November, 1843, to the 10th day of May, 1844 .	23,562
From the 10th day of November, 1844, to the 10th day of May, 1845 .	19,471 <sup>b</sup>
From the 10th day of November, 1845, to the 10th day of May, 1846 .	26,375

FORTUNATUS DWARRIS,

R. GOODRICH,

Two of the Masters of the Court of Queen's Bench in attendance.

A Return by the Masters of the Court of Common Pleas of the Number of Writs of Summons issued out of the said Court of Common Pleas between the 10th day of November, 1845, and the 10th day of May, 1846, and likewise the Numbers issued in the parallel Six Months of Five preceding Years.

D A T E.	Number of Writs of Summons.
Between 10th November, 1840, and 10th May, 1841 . . . . .	11,065
Between 10th November, 1841, and 10th May, 1842 . . . . .	11,349
Between 10th November, 1842, and 10th May, 1843 . . . . .	11,042
Between 10th November, 1843, and 10th May, 1844 . . . . .	11,518
Between 10th November, 1844, and 10th May, 1845 . . . . .	9,002 <sup>b</sup>
Between 10th November, 1845, and 10th May, 1846 . . . . .	12,873

A Return of the Number of Writs of Summons issued out of Her Majesty's Court of Exchequer of Pleas between the 10th day of November, 1845, and the 10th day of May, 1846 ; and also the Numbers issued out of the same Court in the parallel Six Months of the Five preceding years, rendered by the Masters of the said Court.

D A T E.	Number of Instances.
11th November, 1845, to the 9th May, 1846, both days inclusive . .	30,763
11th November, 1844, to the 9th May, 1845 . ditto . . . . .	22,506
11th November, 1843, to the 9th May, 1844 . ditto . . . . .	24,443
11th November, 1842, to the 9th May, 1843 . ditto . . . . .	28,496
11th November, 1841, to the 9th May, 1842 . ditto . . . . .	31,653
11th November, 1840, to the 9th May, 1841 . ditto . . . . .	31,743

EDMUND WALKER, Master.

<sup>a</sup> The return of the number of Bills in Equity appears not to have been made.

<sup>b</sup> The falling off in the number of Writs between Nov. 1844, and May, 1845, was, no doubt, owing to the Abolition of Arrest on Final Process. The subsequent Act and the Railway Litigations restored the number.—Ed.



## BANKRUPTCY.

RETURN to an Order of the Honourable the House of Commons, dated August 3, 1846;—for

A Return “of all Orders made by the Lord Chancellor for the Allowance of Travelling or other Expenses or Charges to Commissioners and Registrars of the Court of Bankruptcy, from the 1st day of September, 1842, to the 6th day of July, 1846; specifying the Cause or Occasion for such Allowances :”

A Return “of all Persons employed in the Office of the Lord Chancellor’s Secretary of Bankrupts, with the Dates of their Appointments, and amount of their Salaries respectively, from the 1st day of September, 1842, to the 6th day of July, 1846.”

A Return “of the Amount of Fees received in the Office of the Lord Chancellor’s Secretary of Bankrupts, under the First Schedule annexed to the Statute 1 & 2 Will. 4, from the 1st day of September, 1842, to the 6th day of July, 1846, with the Application thereof.”

Orders made by the Lord Chancellor for Travelling and other Expenses to Commissioners and Registrars, &c.

DATE OF ORDER.	ALLOWANCE TO WHOM MADE.	AMOUNT.	CAUSE OR OCCASION FOR ALLOWANCE.
1843 :		£ s. d.	
27 November	Mr. Commissioner Holroyd	300 0 0	- - For services and expenses in carrying the Act of 5 & 6 Vict. c. 132, into effect in the country.
27 „	F. C. Parry, Esq. - -	133 0 0	- - For travelling and other expenses whilst acting for and in aid of a registrar in the country.
27 „	J. Campbell, Esq. - -	133 0 0	- - - ditto.
1845 :			
27 January	Mr. Commissioner Holroyd	98 8 0	- - For travelling and other expenses whilst acting for a Commissioner in the country, during his illness.
27 „	Mr. Commissioner Balguy	14 11 0	- - For travelling and other expenses whilst acting in aid of a country Commissioner
27 „	Mr. Commissioner Daniel	46 16 0	- - - ditto.
27 „	T. B. H. Abrahall, Esq. -	28 10 0	- - For travelling and other expenses whilst acting in aid of a registrar in the country.
13 December	Mr. Commissioner Holroyd	84 10 0	- - For travelling and other expenses whilst acting for a Commissioner in the country during his illness.
13 „	Mr. Commissioner Stevenson	19 8 0	- - - ditto.
13 „	R. J. S. Tuckett, Esq. -	55 0 6	- - For travelling and other expenses whilst acting for a registrar during his illness.
1846 :			
1 July -	Mr. Commissioner West	105 15 2	- - For travelling and other expenses whilst acting at Sheffield.
1 „ -	Mr. Commissioner Burge	105 15 2	- - For travelling and other expenses whilst acting at Hull.
1 „ -	S. Payne, Esq. - -	84 12 2	- - For travelling and other expenses whilst acting at Sheffield.
1 „ -	C. Waterfield, Esq. -	84 12 2	- - For travelling and other expenses whilst acting at Hull.
1 „ -	Mr. Commissioner West	10 7 0	- - - ditto.
1 „ -	C. Waterfield, Esq. -	6 16 0	- - For travelling and other expenses whilst acting at Sheffield.
1 „ -	S. Payne, Esq. - -	12 6 0	- - For travelling and other expenses whilst acting at Sheffield and Hull.
1 „ -	Mr. Commissioner Holroyd	63 0 0	- - For travelling and other expenses whilst acting for a Commissioner in the country, during his absence.

Persons employed in the Office of the Lord Chancellor's Secretary of Bankrupts, &c.

NAMES OF PERSONS.	DATE OF APPOINTMENT.	YEARLY SALARY.		
		£	s.	d.
R. Clarke, Esq., Secretary of Bankrupts - - -	11 October, 1842	1,200	0	0
R. C. Ogden, Esq., Secretary of Bankrupts - - -	11 January, 1846	1,200	0	0
T. E. Winslow, First Clerk to Secretary of Bankrupts	28 April, 1842	500	0	0
E. W. Smith, Second Clerk to Secretary of Bankrupts	16 February, 1839	300	0	0
and First Clerk to Secretary of Bankrupts, vice Winslow, appointed Registrar	11 April, 1845	500	0	0
J. R. Brougham, Second Clerk - - - - -	11 April, 1845	300	0	0

Fees received in the Office of the Lord Chancellor's Secretary of Bankrupts, &c.

AMOUNT OF FEES RECEIVED.	APPLICATION THEREOF.		
£ s. d.	£ s. d.		
2,979 9 7	1,016 17 9	For office expenses.	
	1,962 11 10	Surplus, by the Secretary of Bankrupts.	
£.	2,979 9 7		

28th August, 1846.

(Signed)

RICHARD CLAKE.  
C. R. OGDEN.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

III. PRACTICE.

[For the Digest of *Railway Cases* see p. 510, *ante*; *Construction of Statutes*, p. 535, *ante*; *Principles of Common Law and Grounds of Action*, p. 556, *ante*.]

AFFIDAVIT.

1. *Jurat*.—The jurat of an affidavit sworn before a commissioner in the country, on which a certiorari to bring up an order of sessions was granted, omitted the words "before me." *Held*, that the defect was fatal to the affidavit.

*Semble*, that where an affidavit is sworn before a judge at chambers, the ordinary form of the jurat, "sworn by the above-named defendant, &c., at my chambers, Roll's Gardens, Chancery Lane, this 19th day of November, 1844.—E. H. Alderson," is sufficient. *The Queen v. Norbury*, 32 L. O. 106.

2. *Form of Jurat*.—The jurat of an affidavit purporting to be sworn by C. E., was drawn as follows:—"Sworn at *Bandbury*, in the county of *Oxford*, this 8th day of *February*, 1844, *William Manton*, a Commissioner," &c.

*Held*, a fatal objection that the words "before me" were not inserted between the date and the signature, though an exhibit was annexed, having subscribed to it the words, "This is the notice referred to in the annexed

affidavit of C. E., sworn before me this 8th day of February, 1844.—*Wm. Munton*," *Reg. v. Bloxham, Inhabitants of*, 6 Q. B. 528.

Case cited in the judgment: *Rex v. Justices of the West Riding*, 3 M. & S. 494.

3. *Security for costs*.—*Description of defendant*.—An affidavit of the defendant in support of a rule to compel the plaintiff to give security for costs is sufficient, if it can be collected from the context that the deponent is the defendant in the cause, although he is not so described in terms. *Loutreuil v. Phillipe*, 32 L. O. 203.

4. *Of jurymen, as to verdict*.—*Miscarriage in taking verdict*.—In case for an infringement of a patent, the judge left three questions to the jury; and, on their retiring to consider their verdict, he handed to the associate an abstract of the pleadings, desiring them to take their finding separately on the three questions so submitted to them. The jury returned into court, stating that they found a verdict for the plaintiff generally. The counsel for the defendant requested the associate to put the questions separately: this he declined to do, notwithstanding one of the jurymen intimated that three points had been distinctly put to them by the judge; the plaintiff's counsel objecting to that course. The court directed a new trial, without costs.

Affidavits of jurymen, as to what passes among themselves with reference to a verdict, are not admissible. *Bentley v. Fleming*, 1 C. B. 479.

Case cited in the judgment: *Burgess v. Langley*, 5 Mann. & Gr. 723; 6 Scott N. R. 518.

And see *Distringas*, 1; *Ejectment*, 2; *Judgment* 1; *Scire facias*, 1.

#### AMENDMENT.

*At trial under stat. 3 & 4 W. 4, c. 42, s. 23.*—Declaration on a guarantee stated that, in consideration that plaintiff would make advances of money by way of loan to B., defendant promised to repay plaintiff such sums as he should so advance, if B. should make default. Breach, that B. made default, and defendant did not pay plaintiff. Plea, that plaintiff did not make the said advances to B., in manner and form, &c. Issue thereon.

The judge at the trial ordered the declaration and plea to be amended, under stat. 3 & 4 W. 4, c. 42, s. 23, by stating in the count, that, in consideration that plaintiff would procure the *British and Australian Bank*, in which plaintiff was a partner, to make advances, &c., to B., defendant promised plaintiff to repay the said bank such sums as plaintiff should so cause to be advanced, &c.; and in the plea, that plaintiff did not procure the said bank to make the said advances.

*Held*, that such amendment was not warranted by the statute. *Boucher v. Murray*, 6 Q. B. 362.

See *Judgment*, 2.

#### APPEARANCE.

1. *Time for entering.*—The statute 2 W. 4, c. 39, s. 11, takes the time for the service of a writ of summons out of the operation of Reg. Gen. B. T. 2 W. 4, and therefore an appearance may be entered for the defendant on the 16th, where the writ of summons had been served on the 6th of the same month, the intervening 12th being Easter Day. *Harris v. Robinson*, 32 L. O. 157.

2. *Sec. Stat., Infant.*—Where a plaintiff appeared sec. stat. for an infant defendant, the court set aside the appearance and subsequent proceeding, without costs, on summary application. *Stephens v. Lowndes*, 3 D. & L. 205.

Case cited in the judgment: *Nunn v. Curtis*, 4 Dowl. 729.

See *Distringas*, 2.

#### ARBITRATOR.

See *Judgment*, 3.

#### ARREST OF JUDGMENT.

See *Judgment*, 2.

#### ATTACHMENT.

*Service of rule.*—*Personal service.*—*Semble*, That the court will dispense with personal service of a rule for an attachment, in cases where there is no other remedy, and it is clear that the party keeps out of the way to avoid service. *Whalley, in re*, 3 D. & L. 291.

#### CERTIORARI.

1. *When to be moved for.*—A certiorari to bring up an order of justices will not be allowed after the expiration of the six calendar months

limited by the stat. 13 Geo. 2, c. 18, s. 5. *Regina v. The Justices of Angleson*. 22 L. O. 179.

2. *Sessions.*—*Vacation.*—A judge in vacation may grant a rule for a certiorari absolute in the first instance to bring up an order of sessions where no case has been reserved by the sessions for the opinion of the court. *The Queen v. The Inhabitants of Newton Ferrars*, 32 L. O. 495.

3. *Costs.*—Where an order for payment of money out of a borough fund is brought up by certiorari, under 7 W. 4, and 1 Vict. c. 78, s. 44, and quashed with costs, the court should decide, when the quashing is ordered, who is to be charged with the costs as "prosecutor" of the order, and the name of such party should be inserted with the rule. Where this practice had not been followed, and a rule for quashing such orders was merely drawn up with costs "to be paid by the prosecutors," without naming them, the court refused, on motion by the party who had obtained the rule for quashing, to issue the attachment against certain persons who had made affidavits in opposition to the certiorari, and placed themselves, according to the argument of the party moving, in the position of "prosecutors" of the orders quashed. *Reg. v. Dunn*, 1 D. & M. 737.

#### COMMISSION.

*Examination of witnesses.*—An order for a joint commission to examine witnesses in Ireland, besides the usual provision for the delivery of interrogatories and cross-interrogatories by each party to the other, empowered the commissioners to put, or cause to be put, additional questions, *when it should appear to them to be necessary and proper*, such questions to be put down in writing and returned with the answers, together with the interrogatories and answers under the commission. *Held*, that this power was not well exercised by the commissioners allowing the agent for one of the parties to put additional questions, subject to the objection raised by the other party. *Williamson v. Page*, 1 C. B. 464.

#### COUNTY COURT.

*Proceedings void after freehold pleaded.*—Where in an action in the sheriff's county court the right of freehold is pleaded, the jurisdiction of the court no longer exists, and all subsequent proceedings become void, and this although the issue in the cause be joined solely on another question. *Tenniswood v. Pattison*, 32 L. O. 325.

#### DECLARATION.

*Setting aside.*—After a regular appearance for the defendant, *sec. stat.*, a motion to set aside the declaration and subsequent proceedings, on the ground that the defendant has not been served with process, is too late. The application should have been, to set aside the appearance. *Brooks v. Roberts*, 1 C. B. 636.

Cases cited in the judgment: *Heaker v. Jar-*

meine 3 Tyrwh. 881; 1 C. & M. 408; Edwards v. Danks, 4 Dowl. R.C. 357.

## DISCONTINUANCE.

*Stay of proceedings.*—A rule to discontinue cannot be taken out during a rule, with a stay of proceedings. *Murray v. Silver*, 1 C. B. 638.

## DISTINGAS.

1. *Affidavit for.*—In support of an application for a *distringas*, it is not enough that the affidavit states inquiries and service to have been made at the place of business of the defendant, and that he cannot be found elsewhere, where the object is to compel an appearance; but for the purposes of outlawry such an affidavit is sufficient. *Rock and others v. Allen and another*, 32 L. O. 107.

2. *To compel an appearance.*—A *distringas* to compel appearance granted upon an affidavit stating that the defendant was confined to his bed and could not be seen, although it did not state that he kept out of the way to avoid being served. *Watkins v. Jones*, 32 L. O. 15.

3. *Service of the writ of summons.*—In order to obtain a *distringas* to compel an appearance, it must appear in the affidavit, that the copy of the writ of summons was left at the defendant's place of residence on the last occasion of calling. *Wilson v. Gunton*, 32 L. O. 204.

4. *Outlawry.*—*Service of writ of summons.*—In order to obtain a *distringas* to proceed to outlawry, if there be a house or place where a copy of the writ of summons can be left with any reasonable prospect of its reaching the defendant, such copy must be left there; and if there be any good reason for not leaving it, explanation of the circumstance must appear upon the affidavit. If a person answering to the description of trustee or professional adviser of the defendant can be found, a copy of the writ should be left with him, though he does not reside in the county into which the writ of summons was issued. *Vernon v. Pouncett*, 32 L. O. 83.

## EJECTMENT.

1. *Service.*—Where a declaration in ejectment was intitled "Trinity Term, 9 Vict.," instead of "Trinity Term, 8 Vict.," and the notice, which was without date, required the tenant to appear in next Michaelmas Term, the court granted a rule for a judgment against the casual ejector. *Doe d. Gyde v. Roe*, 3 D. & L. 309.

2. *Judgment against the casual ejector.*—*Sufficiency of affidavit.*—On a motion for judgment against the casual ejector in ejectment it is sufficient if the affidavit of the service of the declaration, &c., contain the initials of tenant in possession's christian names. *Doe v. Roe*, 32 L. O. 351.

3. *Staying proceedings against a sub-lessee under 4 G. 2, c. 28, s. 4.*—In ejectment upon a forfeiture for non-payment of rent, a sub-lessee is entitled to a stay of proceedings, on payment of the rent and taxes, under the 4 G. 2,

c. 28, s. 4. *Doe d. Wyatt v. Byron*, 1 G. B. 623.

4. *Lease.*—*Excuse for re-entry.*—A lease of lands and premises contained a proviso that on nonpayment of rent by the lessee the lessor might enter on the premises for the same till the same shall be fully satisfied and discharged: Three quarters of a year's rent being in arrear, the lessor brought an action of ejectment under the 4 Geo. 2, c. 28, and obtained a verdict.

*Held*, that inasmuch as the operation of the second section of the statute was to make the lease absolutely void in case judgment was recovered by the lessor, the statute was only intended to operate when the right of re-entry was absolute and not *quousque*, and that therefore the action could not be maintained, and judgment must be entered for the defendant. *Doe dem. Dark v. Bodwitch*, 32 L. O. 228.

5. *Undertaking, &c., under stat. 1 Geo. 4, c. 87, s. 1, when required.*—If an agreement for a tenancy from year to year has been executed, the tenant may be ruled to give an undertaking and enter into a recognizance under the stat. 1 Geo. 4, c. 87, s. 1, although on the same day upon which such agreement was executed another (stated to be a "supplemental" one), was entered into by which the landlord engaged that the holding should continue until the happening of a certain event. *Doe d. Newstead v. Roe*, 32 L. O. 203.

## EXECUTION.

1. A defendant came up to be charged in execution, and the gaoler returned that the evening before the defendant had been discharged out of custody by virtue of an interim order under the 5 & 6 Vict. c. 116. *Held*, that he could not be charged in execution. *Sloman v. Williams*, 32 L. O. 158.

2. *Married woman.*—A married woman taken in execution on a *ca. sa.* in an action commenced against her before her marriage is not entitled to be discharged out of custody, although it appears that she has no separate property. *Banin v. Jones*, 32 L. O. 279.

3. A cause was tried in vacation, and the judge granted a certificate for speedy execution pursuant to the 1 W. 4, c. 7, s. 2, judgment was signed and execution issued the following day.

*Held*, that the proceedings were regular, and that the effect of the statute is, that execution may issue immediately, and that it is not necessary that four days should elapse before judgment is signed. *Alexander v. Williams*, 32 L. O. 133.

4. *Writ of error.*—Where a writ of *fi. fa.* had issued, and the sheriff had taken possession, but the execution was rendered ineffectual by adverse proceedings in equity, and, after the sheriff had taken possession, a writ of error was sued out by the defendant below: *Held*, that such writ was issued "afore execution had," under stat. 3. Hen. 7, c. 10.

Under the enactment of that statute, that where the plaintiff is delayed of execution by a

writ of error, and the judgment be affirmed, "the person against whom the writ of error is sued shall recover costs and damages for his delay," (extended to double costs by 13 Car. 2, st. 2, c. 2, c. 10.) *Held*, that when plaintiff in error had not put in bail under 3 Jac. 1, c. 8, & 6 G. 4, c. 96, s. 1, the execution was not "delayed" within the meaning of the statute, even for the four days allowed by practice for putting in bail; and therefore, although the judgment was affirmed, the defendant in error was not entitled to double costs. *Newlands v. Holmes*, 1 D. & M. 647.

Case cited in the judgment: *Gravall v. Stimpson*, 1 Bos. & P. 478.

And see *Prisoner*.

#### INFANT.

See *Appearance*, 2.

#### IRREGULARITY.

*Appeal from decision at chambers*.—If a summons to set aside proceedings for irregularity be dismissed by a judge at chambers, upon the ground that the application is too late, the court will not interfere. *Lane v. Newman*, 32 L. O. 107.

#### INTERPLEADER ACT.

*Motion to stay proceedings after interpleader order*.—Under the Interpleader Act, 1 & 2 W. 4, c. 58, the court has no power to stay the proceedings in an action against the sheriff for breaking and entering the plaintiff's house, though consequent upon a seizure of certain goods, the claim to which had been decided in favour of the plaintiff under an interpleader order.

An application to stay proceedings under the act should be made to the court in which the interpleader proceedings have taken place, or a judge thereof. *Hollier v. Todd, Laurie, and Chaplin*, 32 L. O. 374.

#### JUDGMENT.

1. *Scire facias*.—*Title of affidavit*.—An affidavit in support of an application to sign judgment for want of appearance to a writ of *scire facias*, is properly entitled as the proceedings on the *scire facias*, and not as in the original action. *Smith and others, executors of Walter Smith, v. Earl of Charleville*, 32 L. O. 398.

2. *Nul tiel record*.—*Amendment of original record*.—Where, on a motion for a judgment on an issue of *nul tiel record*, there appeared an irregularity in entering the issue in the original record, the court allowed an amendment to be made, and granted the application. *Revell v. Weiherell*, 32 L. O. 398.

3. *Arrest of, when too late*.—*Reg. Gen. H. T.*, 2 Will. 4, pl. 55.—A cause was tried on the 18th of April, in Easter Term, which commenced on the 15th; the *distringas* was returnable on the 23rd, and a motion for arrest of judgment was made on the 26th. *Held*, that the motion was too late within R. G. H. T., 2 Will. 4, s. 65, it not having been made within four days from the day of trial. *Moon v. Robinson*, 14 M. & W. 477.

4. *Arbitrator's certificate*.—Where a verdict is taken at *nisi prius*, subject to the certificate of an arbitrator, such certificate, when given, relates back to the time when the verdict was pronounced; therefore, where such certificate is given in vacation, after more than four days from the return day of the *distringas*, the successful party is entitled to sign judgment immediately. *Cromer v. Chart*, 32 L. O. 496.

#### JUDGMENT AS IN CASE OF A NONSUIT.

1. *Excuse to discharge rule nisi per*.—An affidavit stating that, after notice of trial was given, the plaintiff was advised that he could not safely proceed to trial, by reason of his "having inadvertently and in ignorance of an important fact in the case, omitted to instruct his attorney," discloses sufficient cause to discharge a rule for judgment as in case of a nonsuit, where there has been but one default. *Metcalfe v. Tattersall*, 32 L. O. 38.

2. *Trial by proviso*.—It is no ground for discharging a rule for judgment as in case of a nonsuit, without a peremptory undertaking, that he the plaintiff has, since the commencement of the action, discovered that the debt is recoverable in a court of requests.

*Quære*, whether a writ of trial can be carried down by *proviso*.—*Nicholson v. Jackson*, 1 C. B. 622.

#### JURAT.

See *Affidavit*, 1, 2.

#### JURISDICTION.

See *County Court*.

#### JURYMAN.

See *Affidavit*, 4.

#### MARRIED WOMAN.

See *Execution*, 2.

#### MISDIRECTION.

See *Trial*, 5.

#### NUL TIEL RECORD.

See *Judgment*, 2.

#### OUTLAWRY.

*Disabilities consequent upon*.—An outlaw cannot maintain an application to compel the delivery of an attorney's bill, or to refer it to taxation. *In re Ford*, 32 L. O. 134.

And see *Distringas*, 4.

#### PARTICULARS OF DEMAND.

1. The plaintiff's particulars, in an action for money had and received, stated, that the action was brought to recover "the sum of 134 6s., for money received by the defendant as the treasurer of a club, for the use of the plaintiff as the drawer of the second horse in the Derby stakes, according to the rules of the said club. The defendant pleaded, that the money was subscribed to an illegal lottery; and it was therefore held, that the plaintiff could not recover the 134 6s. *Held*, that he could not, under these particulars, recover back his own stake of 24.

**Quere**, whether, where a party claims, as winner, the whole of the stakes deposited on an illegal wager, he can recover back his own stake as money received to his use by the stakeholder. *Mearing v. Hellings*, 14 M. & W. 711.

2. **Variance**.—In an action for work and labour, the particulars of demand stated that the plaintiff sought to recover 450*l.* for his services as clerk to the defendant, from October, 1837, to October, 1839, at the rate of 200*l.* per annum. At the trial the plaintiff claimed the money for commission on business done by the defendant. *Held*, a fatal variance, and that the plaintiffs could not recover under that particular. *Law v. Thompson*, 32 L. O. 325.

#### PAYMENT OF MONEY INTO COURT.

**Assault**.—**Justice**.—**Excise officer**.—In trespass for breaking the plaintiff's close and seizing and laying hold of the plaintiff and ejecting him therefrom, the defendant paid 25*l.* into court, upon the sufficiency of which issue was joined and a verdict found for defendant. On motion for judgment *non obstante veredicto*, on the ground that under the 3 & 4 W. 4, c. 42, s. 21, money could not be paid into court in actions for assault and battery.

*Held*, that the plea was good, inasmuch as, for anything which appeared on the record, it might have been pleaded by a justice or excise officer, who are not required by the rule of Trinity Term, 1 Vict., to state the character in which they plead it. *Aston v. Perkes*, 32 L. O. 421.

#### PAUPER.

See *Trial*, 1.

#### PRISONER.

**Charging in execution**.—A prisoner in custody under process of contempt of this court, is liable to be charged in execution upon a judgment in this court in the ordinary way. *Wade v. Wood*, 1 C. B. 462.

#### PROHIBITION.

When a suit is instituted in the spiritual court for defamation, for words containing both imputations for which an action would lie, and other imputations forming matter of ecclesiastical cognizance, if the words are libelled together as forming one charge, and the sentence appears to proceed on all the words, a prohibition will go.

And this although the party aggrieved by the defamatory words was a clergyman: the rule, if it exists, that the civil and ecclesiastical courts have concurrent jurisdiction when a spiritual person is aggrieved, applying only where he is aggrieved in his ecclesiastical character, as by words spoken respecting his ecclesiastical ministration. *Evans v. Gwyn*, 1 D. & M. 705.

Cases cited in the judgment: *Mellet v. Herbert*, 1 Sid. 404; *Hart v. Miah*, 5 A. & E. 591, S. C. 1 N. & P. 62; *Full v. Hutchins*, 2 Cowp. 422; *Cruden v. Wadden*, 3 Lev. 17; *Anon*, 3 Mod. 74.

#### RATING.

**Exemption of societies under 6 & 7 Vict. c. 36**.—The statute 6 & 7 Vict. c. 36, exempts from the poor rate property occupied by societies established exclusively for the purpose of science, literature, and the fine arts: they are to be supported wholly or in part by voluntary contributions, and shall not, and by their laws, may not, make any dividend, gift, division or bonus in money unto or between any of their members.

*Held*, that to bring a society within the provisions of the act it must appear not only that the members do not participate in any profits, but that by the rules of the society they are prohibited from doing so.

**Quere**, Whether a religious tract society can be termed a literary society within the meaning of the act. *The Queen v. William Jones*, 32 L. O. 177.

#### RECOGNIZANCE.

**New trial in a cause in Common Pleas, Lancaster, stat. 4 & 5 W. 4, c. 62, s. 27**.—On application, under stat. 4 & 5 W. 4, c. 62, s. 27, to a superior court in Westminster Hall for a new trial of a cause in the Common Pleas at Lancaster, the recognizance "to make and prosecute such application," is satisfied by obtaining a rule nisi, whatever afterwards becomes of the rule. *Haworth v. Ormerod*, 6 Q. B. 300.

#### SCIRE FACIAS.

1. **Affidavit for leave to sign judgment on return of nihil**.—The affidavit to found a motion for leave to sign judgment on a *sci. fa.* on the sheriff's return of *nihil*, must positively state that diligent attempts have been made to give the defendant notice of the proceedings: therefore, where an affidavit, after stating various futile attempts to discover the defendant's present residence, added that the deponent believed, that if the defendant had had actual notice of the proceedings, he would have removed his goods and chattels and absconded, so as to prevent the plaintiff from levying execution, the court refused the application. *Simcoe v. Bagnall*, 32 L. O. 277.

2. It is no ground for setting aside a writ of *sci. fa.* as irregular, that there has been no return to an alias *fi. fa.* issued on the same judgment, although something has been done under that writ, because this may be a subject of a plea to the *sci. fa.*

It is no sufficient answer to the *sci. fa.*, that a writ of *fi. fa.* issued under the same judgment within a year after the judgment, unless it appear that the debt was satisfied by the levy which took place under such writ.

A plea to a *sci. fa.* stating as above, and that the sheriff entered under a writ, and seized goods and chattels in the defendant's house, is therefore bad, for not averring that the goods and chattels were the defendant's, and that they produced satisfaction; also (per *Patteson, J.*) for averring that the writ was returned and filed, without adding that there is a record of such writ and return.

Where such plea is pleaded, although with a conclusion in abatement, the proper judgment is *quod habeat executionem*. *Holmes v. Newlands*, 1 D. & M. 642.

See *Judgment*, 1.

#### SERVICE OF RULE.

See *Attachment*.

#### SERVICE OF WRIT.

*Waiver of irregularity*.—Where the service of a writ of summons was made more than 200 yards from the boundary of the proper county, but at the time of such service the defendant said, he felt obliged to the party for serving him there, and that he would not fail to attend to it: *Held*, that the irregularity in the service had been waived. *Rumball v. Unit*, 32 L. O. 303.

And see *Distringas*, 3, 4.

#### SPECIAL CASE.

1. *Delivery of postea for want of serjeant's signature*.—Where by consent a verdict is found for the plaintiff, and a special case drawn up for the opinion of the court, and the defendant afterwards refuses to procure a serjeant's signature thereto on his behalf, the court will order the *postea* to be delivered up to the plaintiff, unless within a certain time such signature be obtained. *Doe dem Phillips v. Rollins*, 32 L. O. 134.

2. *Death of defendant*.—Where a case was referred at *nisi prius* to a barrister to state a special case, and the defendant died before the special case was delivered, the court refused to set it aside. *James v. Crane*, 32 L. O. 519.

#### SPECIAL JURY.

*When not too late*.—On the day before Good Friday, being two days after notice of trial, and more than six days before the sittings for which notice had been given, the defendant obtained a rule for a special jury, but the offices being closed during the Easter holidays, an appointment to nominate could not be obtained till the day before the sittings, when the rule and an appointment for a subsequent day were served, the rule having been served alone two days before. If the holydays had not intervened the rule might have been obtained and served on the day after Good Friday.

*Held*, That there had been no such laches as to induce the court to discharge the rule. *Gurney v. Gurney*, 32 L. O. 254.

#### STAYING PROCEEDINGS.

1. *Action in the name of nominal plaintiff without his authority*.—By deed of separation between husband and wife, the husband covenanted to pay an annuity to a trustee for the use of the wife. The annuity being in arrear, and the trustee refusing, upon indemnity, to sue the husband, an action was commenced in the trustee's name, but without his authority, for the recovery thereof. Under these circumstances the court refused to stay proceedings at the instance of the defendant. *Auster v. Holland*, 32 L. O. 229.

2. *Another action pending for substantially the same cause*.—An action by A. against B., to recover the amount of two cheques and interest, being at issue at the Exchequer, and the trial appointed for the 7th of December, a negotiation takes place between the attorneys on the 6th, when it is arranged that the record shall be withdrawn, and that B. shall submit to a judge's order for payment of the amount claimed on the 14th, otherwise judgment, and that certain proceedings in Chancery taken by B. against A. shall be withdrawn. An order is accordingly drawn up and served. B. subsequently discovering evidence that he conceives will enable him to substantiate his defence to the action, obtains a rule to set aside the judge's order upon payment of costs. These costs are taxed and paid to A., who afterwards brings an action in the court against B. for breach of agreement, under which the judge's order was drawn up.

The court refused to stay the proceedings in the second action, it being considered that it was not founded upon the same cause of action as the first. *Wade v. Simeon*, 1 C. B. 610.

Case cited in the judgment: *Longridge v. Dorville*, 5 B. & Ald. 117.

See *Discontinuance*; *Ejectment*, 3; *Interpleader*.

#### TRIAL.

1. *Pauper plaintiff liable to the costs of the day*.—Under rule 10 of Hilary Term, 2 W. 4, a plaintiff admitted to sue in *forma pauperis*, and making default in not going to trial after a regular notice, is liable to the costs of the day, although the default be occasioned by the mistake of his attorney's clerk. *Hodges v. Topliss and another*, 32 L. O. 179.

2. *Cause called on in the absence of plaintiff's attorney*.—The plaintiff in an action of crim. con. having been nonsuited in consequence of the accidental absence of his attorney, the court granted a new trial on payment of costs, as between attorney and client, it appearing that another action might be barred by the Statute of Limitations, and the plaintiff be thereby precluded from taking ulterior proceedings. *Ayling v. Golding*, 1 C. B. 635.

3. *Insufficiency of damages*.—The court will not allow additional affidavits to be filed in support of a motion for a new trial, after the expiration of the time for moving. In an action against a surgeon for negligence, whereby the plaintiff lost his leg, a verdict being found for the plaintiff, with nominal damages, the court refused to grant a new trial, the judge having expressed himself satisfied with the verdict. *Gibbs v. Tunally*, 1 C. B. 640.

Cases cited in the judgment: *Rendall v. Hayward*, 5 N. Ca. 424; 7 Scott, 407; 2 Arn. 14; *Hayward v. Newton*, 2 Str. 940.

4. *Payment of costs*.—A rule to discharge a rule for a new trial, on the ground that the party has neglected to pay costs, is a rule *nisi*, which makes itself absolute, unless cause be shown within a limited time. *Phillips v. Warren*, 3 D. & L. 301.

5. *Misdirection*.—*S.* being indebted to the defendants, who had acted as his solicitors, in a large sum of money, they, before his bankruptcy, received certain sums belonging to *S.* from his agent, and applied them in discharge of their claims upon him. *S.* having afterwards become bankrupt, and his assignees having brought an action against the defendants to recover this money as money had and received to their use as assignees, the learned judge told the jury that, if the defendants before the bankruptcy actually received the money to the use of the bankrupt, they held it after the bankruptcy to the use of the assignees, who were entitled to succeed on the issue of *non assumpsit*. *Held*, that this was a misdirection, and that there ought to be a new trial, unless it was clear that the jury were not misled, and that it was afterwards explained away. *Pennel v. Aston*, 14 M. & W. 415.

And see *Amendment*.

6. *Reduction of damages*.—On showing cause against a rule *nisi* for a new trial, on the ground of misdirection, the plaintiff's counsel consented to abandon that part of his demand to which the misdirection applied; the court, without the assent of the defendant, discharged the rule for a new trial, and made the rule absolute as a rule for reducing the damages. *Moore v. Tuckwell*, 1 C. B. 607.

Cases cited in the judgment: *Edmondson v. Machell*, 2 T. R. 4; *Twigg v. Potts*, 1 C. M. & R. 89; and see *Crease v. Barrett*, ib. 919; 5 Tyrwh. 438.

#### WARRANT OF ATTORNEY.

*Not duly filed, void*.—Money had and received by assignees against execution creditor. Judges order for admission of documents.

A warrant of attorney, which is not filed within the period prescribed by the 3 Geo. 4, c. 39, is void against the assignees in bankruptcy of the debtor, although judgment be signed and execution issued on it before the commission of the act of bankruptcy. In such a case, the assignees may maintain money had and received against the execution creditor, to whom the goods were assigned by the sheriff in specie, at an appraised value. A judge's order for the admission of documents in evidence referred to a notice served by the defendant's attorney, dated 4th March, 1845. The notice produced was dated the 1st March; but the plaintiff's attorney stated that it was the only notice served in the case. *Held*, sufficient. *Bittleston v. Cooper*, 14 M. & W. 399.

#### WITNESSES.

*Discretion in examining on interrogatories*.—*Costs of keeping witness in England*.—The having obtained an order to examine on interrogatories, does not preclude a plaintiff from detaining the witness for a *vidæ voce* examination at the trial, and where the defendant has obtained an order to postpone the trial, and subsequently to stay all proceedings upon payment of the sum sought to be recovered and costs, he is bound to pay the expenses of the

detention from the postponement up to the time of settling the action. *Evans v. Watson and another*, 32 L. O. 278.

See *Commission*.

#### WRIT OF INQUIRY.

*Under-sheriff*.—*Signature to certificate under 3 & 4 Vict. c. 24*.—In an action for a malicious prosecution, where the writ of inquiry is in the usual way directed to the sheriff, but the execution thereof takes place before the under-sheriff, the certificate endorsed under the 3 & 4 Vict. c. 24, and signed in the name of the sheriff is sufficient. *Stroud v. Watts*, 32 L. O. 302.

#### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Queen's Bench.

(Before the Four Judges.)

*Goodal v. Lowndes*.

ASSUMPSIT.—COMPROMISE OF INDICTMENT.

*A. was indicted for disobedience to an order for payment of money under a bastardy order; he compromised the indictment by paying the parish money and the costs. He afterwards had reason to think that the indictment could not have been maintained, and he brought assumpsit to recover back the money he had paid. Held, that the action was not maintainable.*

THIS was an action of assumpsit tried before Lord Chief Justice Tindal, at Stafford, when the following circumstances appeared in evidence:—The plaintiff had been summoned before the sessions on the charge of being the father of a bastard child. The sessions thought the charge proved, and made two orders for payment of a certain sum of money to the parish, with costs. The orders were disobeyed, and the plaintiff was then threatened with an indictment for disobedience to the orders, and the indictment was actually preferred. The plaintiff then became alarmed, and entered into a compromise with the parish authorities, under which he paid a sum of 80*l.*, composed of 30*l.* for parish money and costs thereon, and 50*l.* for the costs of the indictment. Some time after he had paid the money under this compromise, he found reason to believe that the orders of the sessions were bad, and never could have been enforced. He then brought this action to recover back the money he had paid under these circumstances. When the case came on for trial and these facts had been proved, Lord Chief Justice Tindal expressed his opinion that the action could not be maintained. He therefore nonsuited the plaintiff, but gave him leave to move to enter a verdict for the whole sum, if the court should think the action maintainable.



Mr. *Whately* now moved accordingly to enter the verdict for the plaintiff for the sum of 80*l*. The money here was paid under the coercion of the indictment, and being so, there are several cases which show that it may be recovered back. *Thearn v. Leaper*<sup>a</sup> is an authority to that effect. There an action of ejectment having been brought, the defendant in that action served the plaintiff with notice that he should proceed against the plaintiff for penalties incurred by him under the Turnpike Act. The plaintiff upon that offered a compromise, which was ultimately accepted. The plaintiff gave up his claim to the land, and paid 50*l*. for the costs. When the period limited by the Turnpike Acts for bringing the action for penalties had expired, the plaintiff brought an action to recover back the 50*l*., and also took proceedings to set aside the agreement under which the action of ejectment had been stayed. Lord Chief Justice *Tindal* left it to the jury to say whether the 50*l*. had or not been paid under the coercion of the fear of the action for penalties. The court, on motion for a new trial, held that the case was rightly left to the jury, and that the plaintiff was entitled to recover. *Townsend v. Wilson*<sup>b</sup> and *Chappell v. Poles*<sup>c</sup> were to the same effect. The same rule was laid down in *Williams v. Hedley*,<sup>d</sup> *Felham v. Terry*,<sup>e</sup> and all these authorities were recognised in *Keogh v. Leman*,<sup>f</sup> where this court laid down the broad rule that a compromise of an indictment in a case where the subject matter of indictment related equally to a private right and to a public offence, was not illegal, but might form the consideration for an action of assumpsit. The learned judge ought therefore to have told the jury in this case, that if the money had been paid under the coercion of the indictment, it might be recovered in this form of action.

*Cur. adv. vult.*

Lord Denman, C. J., now delivered judgment, and, after stating the nature of the case and the objections which had been raised to the learned judge's direction to the jury, said:—It does not appear that the defendant did any thing towards procuring the payment of this money. He merely indicted the plaintiff, which he had a right to do, and which of itself cannot form a ground for the present action. If it is urged that the agreement to compromise the indictment was corrupt, then the plaintiff being *in pari delicto*, cannot recover. The plaintiff here was himself the party moving to this compromise, by which he must now abide.

Rule refused.

<sup>a</sup> 1 Man. & Gr. 747.

<sup>b</sup> 1 Camp. 396. <sup>c</sup> 2 Mee. & Wels. 867.

<sup>d</sup> 6 East. 378.

<sup>e</sup> 1 Term Rep. 787 n., Cowp. 319.

<sup>f</sup> Nom. *Keir v. Leman*, Jur. Sept. 31, 1844.

*Hockley*.

*Steadman v. Hockley*. Trinity Term, June 3, 1846.

# CERTIFICATED CONVEYANCER.—LIEN.

*A certificated conveyancer has no lien on deeds, &c. delivered to him for work done "with and in respect of" them.*

*Semble, per Alderson, B., otherwise if the work is done upon them.*

THIS was an action of detinue for deeds, writings, &c. The defendant pleaded, that he was a practising conveyancer certificated according to the statute in that case made and provided, and as such certificated conveyancer entitled to certain fees and reward in respect of work and labour done by him in his said profession and business; that the plaintiff delivered the said deeds, writings, &c. to the defendant, for the purpose of enabling the defendant to do and transact divers affairs and businesses, as such certificated conveyancer for the plaintiff, *with and in respect of* the said deeds, writings, &c. for certain reasonable fees and reward to be paid by the plaintiff to the defendant in that behalf. That he the defendant received the deeds, writings, &c. from the plaintiff, under and by virtue of the said delivery, and for the purpose and on the terms aforesaid; and the same have ever since remained in the possession of the defendant. The plea then averred, that the defendant did do and transact divers affairs and businesses as such certificated conveyancer, *with and in respect of* the said deeds, writings, &c.; and that there was due to the defendant from the plaintiff as reasonable fees and reward for his work and labour, as such certificated conveyancer, in doing and transacting the affairs and businesses aforesaid, the sum of 5*l*. 11*s*. 10*d*., by reason whereof, the defendant was and still is entitled to hold the said deeds, writings, &c. as and for a lien for the said sum of money so due, and owing to him as aforesaid; wherefore, the defendant hath detained, and still detains the same as he lawfully might, &c. To this plea the plaintiff demurred.

*Bovill* in support of the demurrer. The question here raised, is, whether a certificated conveyancer has a lien on deeds for work done in respect of them. A claim of lien can only arise where a party has expended his labour and skill on a particular chattell. *Scarfe v. Morgan*, 4 M. and W. 282. In *Sanderson v. Bell*, 2 C. and M. 304, it was held, that an auctioneer to whom a mortgage deed had been delivered, for the purpose of obtaining payment of the principal and interest due thereon, had no lien on the deed, in respect of his trouble in making applications. *Hollis v. Claridge*, 4 Taunt. 807, will be relied on by the other side. There it was held, that every one, whether attorney or not, has by the common law a lien on the specific deed or paper delivered to him to do any work or business thereon. But that case must be considered as overruled by subsequent decisions.

*Udall* contra. A certificated conveyancer

may maintain an action for his fees; *Poucher v. Norran*, 5 D. and R. 648, and if so, he may detain the deeds until the fees are paid. A specific lien exists whenever a chattel is bailed to a party to exercise his labour upon it, so that in parting with the chattel he parts with his labour. Thus a jeweller, who weighs or examines a jewel, has a lien on it. In like manner, an auctioneer has a lien for commission on the chattels which he sells. *Williams v. Millington*, 1 H. Black. 85. A lien attaches immediately a chattel is delivered, for the purpose of work being done upon it. *Ex parte Ockenden*, 1 Atk. 235. In *Ex parte Grove*, 3 Bing. N. C. 304, it was held, that the commissioners who take acknowledgments of married women, have a lien for their fees on the deeds executed, the certificate of the execution, and the affidavit of verification. *Sanderson v. Bell* is distinguishable, because in that case there was no agreement that the auctioneer should be paid. The present question was raised in *Phillips v. Robertson*, 4 Bing. 106, but not decided. The plea alleged, that the deeds were delivered to the defendant to do business with for certain reward, which imports a condition precedent. *Chase v. Westmore*, 5 M. and Sel. 150, [*Alderson B.* The plea does not state that the defendant expended his labour on the deed. If he had written an opinion on the back of it, it might be different.] In that case he might have been liable to an action for spoiling the deed.

*Bovill* was not called upon to reply.

*Potlock, C. B.* The plaintiff is entitled to a judgment. The doctrine of lien is correctly stated by *Tindal, C. J.* in *Bleaden v. Hancock*, 4 C. & P. 153. That was an action for stereotype plates, which were put into the hands of a printer for the purpose of having work done in respect of them; but it was never suggested that there was a right of lien independent of custom, and the custom not having been proved, the jury found against the claim of lien. Nobody appears to have suggested a right of lien at common law, because something had been done in respect of the plates. *Tindal, C. J.* there lays down what I think is the correct rule. "This is not the case of a lien claimed by a person who has bestowed labour or expended money upon an article, and who may detain it until he is paid. Everybody knows that by the common law a man may detain the commodity upon which he has bestowed labour or money. But this is a claim of a larger lien, and those who seek to establish such a lien, must show a course of dealing so general and uniform, that persons must be supposed to form their contracts tacitly on the understanding that there is such an usage." The case of a jeweller who examines a diamond, or that of a person to whom corn is sent to be measured, or the doing something to an article by which its value is apparently increased, are fallacious in this respect, because in reality the claim of lien arises from labour bestowed on the article itself. Where the jewel is weighed, what labour has been be-

stowed is expended on the jewel itself. So with respect to corn measured, the labour has been bestowed on the corn. An ingot of gold, the assay of which has been made, is rendered more valuable, because you know what it is, and can certify what it is, and how it differs from the standard. So a jewel which has been weighed will fetch a better price, if you can warrant its weight. In like manner corn is in a more saleable condition when its quantity has been ascertained. In reality, all those instances are not exceptions to the general rule, for they are cases in which labour has been bestowed on the article itself. As, therefore, in the case of *Bleaden v. Hancock*, it was held, that although something was done in respect of the article, still there was no lien upon it, it seems to me, upon general principles, that in this case a conveyancer has no lien upon documents, merely because he has transacted business in respect of them.

*Alderson. B.* This is a lien claimed at common law, and it is confined to those articles upon which the labour of the party has been expended. It does not appear from the plea that any labour was expended on the articles in question.

*Rolfe, B.* I cannot say that I quite concur in the application of the principle to all the cases which have been put. With regard to the weighing of a diamond, I think it is rather straining the reason, to say that the article is thereby made more valuable.

*Platt, B.* Concurred.

Judgment for plaintiff.

## COMMON LAW SITTINGS.

### Exchequer of Pleas.

#### IN MIDDLESEX.

##### In Term.

1st Sitting, Tuesday	.	.	.	Nov. 3
2nd Sitting, Tuesday	.	.	.	10
3rd Sitting, Thursday	.	.	.	19

#### IN LONDON.

1st Sitting, Friday	.	.	.	Nov. 6
2nd Sitting, Tuesday	.	.	.	17
(And by Adjournment)	.	.	.	Wednesday 18

##### After Term.

#### IN MIDDLESEX.

#### IN LONDON.

Thursday	.	.	Nov. 26		Friday	.	.	Nov. 27
(To adjourn only.)								

The Court will sit in Middlesex, at Nisi Prius in Term, by adjournment, from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

The Court will sit, during and after Term, at ten o'clock.

## NOTES OF THE WEEK.

## ECCLESIASTICAL COURTS.

WE observe that a meeting has been held of the committee of the deputies of the three denominations of Protestant Dissenters, at which the following resolutions were adopted:—

"1. That this committee have received with pleasure a communication from the Society for the Abolition of Ecclesiastical Courts, by their Secretary, the Rev. Edward Muscutt.

"2. That in the general object of that Society the committee concur, as—whether they consider the origin, the number, the jurisdiction, the judges, the proceedings, the patronage, the appellants tribunals, the expence, the enormous powers,—or the intolerant nature, objects, or operations of those courts, (and having considered the report of the commissioners appointed by the crown to examine into those courts,)—they must, as ordinary members of the community, and especially as Protestant Dissenters, unite with many eminent lawyers and distinguished statesmen in regarding them as incompatible with any liberal and enlightened jurisprudence, and as injurious both to religious liberty and the public good.

"3. That this committee therefore express cordially their wishes for the success of the intended endeavours for their abolition; that they will recommend the general body of deputies to present a petition to both Houses of Parliament expressive of their opinions, and deprecating the continuance of such establishments, and will cherish a hope that the legislature in the approaching session will accomplish an improvement long and ardently desired; and that her Majesty's present government will add to many useful and patriotic exertions their decided patronage and support to all efforts for the thorough reform, or rather for the entire abolition of the ecclesiastical courts."

These resolutions come from an active and influential body, which in the next session may be expected to support a reform that in various modes has been repeatedly before parliament.

## EXAMINATION OF ATTORNEYS.

It is expected that the examination will take place a few days earlier in the next term than heretofore. By the 4th sect. of the rules of Hilary Term, 1836, "the examinations were to be held on such days (*being within the last ten days of Term*) as the examiners or any five of them should appoint." In the new rules of Easter Term, 1846, the words "*being within the last ten days of term*" are omitted. We understand that the former practice will be followed as closely as possible, but that in Michaelmas Term, when the annual registration of attorneys takes place, it will be convenient to hold the examination a few days earlier than usual, and it has been fixed for *Wednesday, the 11th November*. Each candi-

date will have notice according to the address he may have left at the Law Society.

## THE EDITOR'S LETTER BOX.

IN general all the important practical cases appear in the *Legal Observer* before any other publication, but in the comments upon the cases they are usually referred to as appearing in some other reports. It is proper to mention, in justice to our Exchequer reporter, that in the *Legal Observer* of the 3rd October, p. 525, the important case relating to the form of plea of payment of money into court (*Love v. Steele*) is cited as if it had only been published in the September number of the *Law Journal*, whereas it appeared in the *Legal Observer* of the 15th August, one fortnight before.

The notes on important cases are designed as commentaries accompanying the *Digest of Cases*, but the commentary generally appears as soon as the report is published, in order that our readers may have their earliest attention called to the subject.

The articles of "*Lex*" not having been executed until July, although he entered the service of the attorney in the previous Term, we apprehend he cannot be examined in Trinity Term. We cannot say what the court might order under any urgent circumstances which may be stated when the time arrives.

In answer to the inquiry relating to the case *ex parte Reynolds*, (p. 519, ante), so far as we can yet inform our correspondent, we may mention, that in *ex parte Nicholls*, (10 Jur. 482), the chief judge, speaking of §§ 46 & 55 of 1 & 2 Will. 4, refused to decide, that in no case would the party be exempt from the payment of the 20*l.* and 10*l.* In *ex parte Buchanan, re Birley*, July 13, the chief judge gave the bankrupt's solicitor priority as against the office fees of 20*l.* and 10*l.* for his bill of costs; the fiat, however, had been sued out by the bankrupt himself,—no creditors' assignees had been chosen, and subsequently the bankrupt had obtained his certificate. These fees were paid under the 46th and 55th sections. It would seem, therefore, that, under very special circumstances, the court, in the exercise of its discretion, considers itself as possessing the power of ordering the fees under § 46 to be returned, or, in some cases, of not insisting on the payment. It is, probably, a power which will be very rarely exercised.

We expect to be prepared by next week with an article on the *Jurisdiction* of the New Small Debt or County Courts. The points mentioned by "*Vindex*" and "*V. L.*" shall then be considered.

"A. B." is informed by several of our correspondents, that the fee of 1*s.*, formerly paid to overseers on claiming to vote, is abolished by the Registration Act, 6 Vict. c. 18, s. 58.

"An Unfortunate" is referred to the "*Digest of Examination Questions*," second edition, and the "*Articled Clerks' Manual*," fourth edition, where he will find the assistance he requires.

# The Legal Observer.

SATURDAY, OCTOBER 24, 1846.

———"Quod magis ad nos  
Pertinet, et nescire malum est, agitamus."

HORAT.

## JURISDICTION OF THE NEW COUNTY COURTS.

IN our summary of the provisions of the Small Debts Act prefixed to the act itself,<sup>a</sup> occasion was taken to remark, that the clauses relating to the jurisdiction of the courts were scattered through different parts of the act, so as to require those sections to be brought into juxtaposition in order to form any adequate notion of the intentions of the legislature. Upon selecting and arranging those clauses, they will be found, in some instances, to have been framed in so slovenly and unintelligible a manner as to admit of great doubt with respect to the nature and extent of the jurisdiction which the new tribunals are meant to exercise. As it seems to be generally supposed, however, that the act is to be inflicted on some portion of the country early in the next year, it is extremely desirable that the jurisdiction of the new courts should be correctly understood, so far as those who concocted the measure have rendered their design intelligible. The following observations are intended to afford our readers such assistance on this point as a careful consideration of the statute enables us to offer, but many of the difficulties that suggest themselves are of a nature so formidable, that they can only be overcome by legislative interference, the more especially as the road which leads to judicial decision is barred by prohibiting any appeal to the superior courts.

The first question which suggests itself, as regards the jurisdiction of the courts about to be established, is, whether they are to exercise a *concurrent* or an *exclusive*

jurisdiction? We apprehend it will be found that the late act does not create any exclusive jurisdiction. It is an acknowledged principle of construction, that the jurisdiction of the superior courts can only be ousted by express words or necessary intendment,<sup>b</sup> and no provision will be found in the statute prohibiting a suitor from bringing his action in the superior courts, whatever may be the nature or pecuniary amount of his claim. The deprivation of costs is the penalty which the act threatens to inflict on the suitor who prefers the courts in Westminster Hall, to the luxury of cheap law, as about to be administered in the new County Courts. The 129th section provides, that if an action shall be brought in any of the superior courts, for any cause (with a few specified exceptions) for which a plaintiff might have been entered in the new courts, and a verdict shall be found for less than 20*l.* in any action founded on contract, or less than 5*l.* if the action be founded on tort, the plaintiff is to have judgment for the amount of the verdict, *but no costs*. If the plaintiff think fit, however, to disregard the consideration of being reimbursed for his outlay in proceeding to trial, he is not precluded from proceeding in one of the superior courts, in the same manner as if the 9 & 10 Vict. c. 95 had never been passed. The jurisdiction conferred on the new courts is in strictness concurrent with that exercised by the superior courts of law, but it is not co-extensive, for we find certain actions expressly excepted from the cognizance of the courts established under the late act.

Before advertng to the excepted cases, it will be convenient to refer to the dis-

<sup>a</sup> Ante, p. 449.

<sup>b</sup> Dwarries' Treatise on the Statutes, p. 751.

inction between the "ancient jurisdiction" of the County Courts and the "summary jurisdiction" created by the statute 9 & 10 Vict. c. 95. The first section of that act recites, that "the County Court is a court of ancient jurisdiction, having cognizance of all pleas of personal actions to any amount, by virtue of a writ of *justicies* issued in that behalf." And the third section enacts, "that every court to be holden under this act shall have all the jurisdiction and powers of the County Court for the recovery of debts and demands *as altered by this act* throughout the whole district for which it is holden," and this section concludes by enacting, that "every court to be holden under this act shall be a Court of Record," a provision, be it remarked, which essentially alters the ancient constitution of the County Court, which was not a Court of Record;<sup>c</sup> and therefore, as observed by Lord Coke, a writ of false judgment lies of a judgment there, and not a writ of error.<sup>d</sup> The 4th section provides, that "for all purposes, *except those which shall be within the jurisdiction of the courts holden under this act*, the County Court shall be holden as if this act had not passed." The introduction into these clauses of the sentences printed in italics renders the sense so extremely obscure, that there is great difficulty in determining to what extent the ancient jurisdiction and power of the County Court is intended to be preserved or transferred to the newly created tribunals. Those who framed the act probably meant to preserve the "ancient jurisdiction" of the County Court in every case in which its continued existence was not inconsistent with the exercise of the "summary jurisdiction" created and defined by subsequent sections of the statute. But if such were the intentions of the framers of the act, they have failed to express those intentions with tolerable clearness or accuracy; and it remains for the newly-appointed judges, whom the Lord Chancellor may please to select from the countless host of forensic aspirants, to put such a construction on the vague expression "as altered by this act," in the 3rd section, as will render it consistent with the other provisions of the statute, without violating the rules of grammar or common sense.

The "summary jurisdiction" to be exercised in the new County Courts is de-

scribed in the 58th section, which enacts, that "all pleas of personal actions, where the debt or damage claimed is not more than 20*l.*, whether on balance of account or otherwise, may be holden in *the County Court without writ, and all such actions brought in the said court* shall be heard and determined in a summary way in a *court constituted under this act* and according to the provisions of this act." It might seem from the language of this section, that the court constituted under the act is not the County Court, and that although actions for debt or damage not exceeding 20*l.* may be brought in the County Court, such actions are to be determined in the court constituted under this act. The section concludes with a provision, that "the court" (not specifying which court) "shall not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question, or in which the validity of any devise, bequest, or limitation, under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, or for crim. con., or for seduction, or breach of promise of marriage." Although it is not very clearly expressed, we apprehend that it is meant to deprive the courts "constituted under the act," and not the ancient County Court proceeding by virtue of a writ of *justicies* or otherwise, of all jurisdiction in respect of the particular actions enumerated in the proviso, and this construction is fortified by the fact, that the County Court was never competent to deal with any question of title, and was ousted of its jurisdiction when title was even collaterally put in issue.<sup>e</sup> The instances in which jurisdiction is withheld from the courts "constituted under the act" appear to have been selected with as much caprice as judgment. Several of the excepted actions are those which fall peculiarly within the province of a jury to dispose of, in which questions of law seldom arise, and which do not often present an occasion for conflicting testimony. On the other hand, in the trial of actions for breach of covenant, false imprisonment, nuisance, fraud and misrepresentation, negligence by bailies, and cases involving title under facts in

<sup>c</sup> Vide Bac. Abg. tit. "County Courts."  
<sup>d</sup> 1 Inst. 266.

<sup>e</sup> 2 Inst. c. 8, p. 311. *Canada v. Smallwood*, 3 Lev. 204; *Tennison v. Pulteney*, Trin. T. 1846; 15 Law Jour. 231; 32 Leg. Obs. 325, C. P.

bankruptcy, actions on warranties, and the class of actions known as "running down cases," all of which are within the cognizance of the new courts, the most difficult and important points of law constantly arise, or a jury is called upon to decide between statements of the most contradictory nature.

Leaving the consideration of the cases excepted from the new jurisdiction, we return to those in which "the courts constituted under the act" are to exercise a *concurrent* jurisdiction with the superior courts. The 128th section enacts, that all actions and proceedings which before the passing of the act might have been brought in any of the superior courts, "where the plaintiff dwells more than twenty miles from the defendant, or where the cause of action did not arise wholly or in some material point within the jurisdiction of the court within which the defendant dwells or carries on his business at the time of the action brought, or where any officer of the County Court shall be a party," may be brought and determined in any such superior court, "at the election of the party suing or proceeding, as if this act had not been passed." Under this provision, in any of the three events contemplated, namely,—where the plaintiff and defendant dwell more than 20 miles from each other, or the cause of action does not arise within the jurisdiction, or an officer of the County Court is *plaintiff* or defendant, the plaintiff has the option to proceed either in the County Court or in one of the superior courts. The act is silent as to the means or the tribunal by which the facts upon which the option arises, if disputed, are to be determined. We presume that it is intended, that after a plaintiff has exercised his option, brought his action in the superior court, and obtained a verdict, he may be met by an application to deprive him of costs, on the ground that the defendant's dwelling place was within 20 miles, or that the cause of action did not arise wholly or in some material point within the jurisdiction. An able correspondent has suggested, that the provision enabling a plaintiff to bring his action in the superior court irrespective of the amount claimed, "where the cause of action does not arise wholly, or in some material point, within the jurisdiction of the court within which the defendant dwells or carries on his business," is applicable in every case to actions on bills of exchange, promissory notes, and spe-

cialties, because the courts have held that in such cases the cause of action cannot be said to arise in any particular district, and the idea of locality cannot be accurately attached to such instruments. "We are disposed to think, however, that the introduction of the words '*or in some material point*' into the clause, will prevent it from being fairly open to the construction for which our correspondent contends. The decisions of the superior courts, with regard to the instruments referred to, only establishing, that it is impossible, in actions founded on such instruments, truly to aver that the cause of action is confined to a single county; but no case determining, that where a bill or note is drawn, accepted, or indorsed, or a specialty executed, in a particular locality, the cause of action cannot be said to arise in "some material point," within that locality. The clause, however, is framed in such a manner as to afford ample room for reasonable doubt on this and many other points.

The 129th section, already adverted to, confirms the exceptive provisions of the clause immediately preceding, by enacting, "that if any action shall be commenced after the passing of this act in any of her Majesty's Superior Courts of Record, for any cause *other than those lastly hereinbefore specified*, for which a plaint might have been entered in any court holden under this act, and a verdict shall be found for the plaintiff for a sum less than 20*l.*, if the said action is founded on contract, or less than 5*l.* if it be founded on tort, the said plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs as between attorney and client, unless in either case the judge who shall try the cause shall certify on the back of the record, that the action was fit to be brought in such superior court." The obscurity which pervades other parts of the act is consistently retained in this most important section! Three distinct events are contemplated in the earlier portion of the clause, viz. :—1st, a verdict for the plaintiff for less than 20*l.*, in an action on contract; 2ndly, a verdict for the plaintiff for less than 5*l.*, in an action in tort; and 3rdly, a verdict for the defendant. In the first or second case the plaintiff is to have judgment for such sum only, and no costs. In the third event contemplated the defendant is to be entitled to his costs as between attorney and client; but then comes the proviso, "unless in either case"

the judge shall certify that the action was fit to be brought in the superior court. Either means one of two; to which of the three cases does it here refer? And again, suppose the judge to certify that the action was fit to be brought in the superior court. What is to be the consequence of such certificate if the verdict has been for the plaintiff, or if it has been for the defendant? We presume the intention is, that if the verdict be for the plaintiff, and the judge certifies, the plaintiff is to be entitled to costs as in ordinary cases; and the defendant, if the verdict be for the defendant, after such certificate, is to be entitled to the usual costs as between party and party, and not the costs as between attorney and client, to which he will be entitled where the judge does not certify. We presume all this, because we can conceive no other intention consistent with reason or justice, but our readers will judge how far the language of the clause justifies such a construction. One of our numerous correspondents has suggested another question of considerable interest, arising upon the section last cited, taken in connexion with clause 91; which, it will be remembered, enacts, that "no attorney shall be entitled to have or recover more than 10*s.*, unless the debt or damage claimed shall be more than 5*l.*, or more than 15*s.* in any case within the summary jurisdiction given by this act." Now an attorney can only recover for his fees and costs against his own client, although when such fees and costs are recovered from the adverse party, he is entitled to retain them, and the first point which suggests itself is, whether when an action is brought in one of the superior courts in a case "within the summary jurisdiction given by this act," the plaintiff's attorney can recover from his own client any sum beyond that specified for his "fees and costs?" A second question is, whether when an action is brought in one of the superior courts which might have been brought in the County Court, and the defendant succeeds or fails, *his* attorney is entitled to recover a greater amount for costs and fees than the sums of 10*s.* and 15*s.* respectively specified in the 91st section. According to our reading of the statute, an attorney is not precluded from recovering his reasonable charges in any of the cases specified. The scope and operation of the 91st section is confined exclusively to persons appearing and acting, and to the fees to which such persons shall be entitled for

appearing and acting, in the County Court; and has no reference whatever to actions commenced or prosecuted in the superior courts. Moreover, the *liberal* scale of "fees and costs" to be had or recovered by the attorney under the 91st section, is proportioned to and dependent upon the debt or damage *claimed*, whilst the deprivation or allowance of costs, under the 129th section, depends altogether upon the amount of the *verdict*.

The provisions conferring jurisdiction on the new courts as regards the recovery of the possession of tenements under 50*l.* a year, and those which relate to actions of replevin, as well as those sections investing the judges of the County Courts with a species of criminal jurisdiction analogous to that conferred on the Commissioners of Bankruptcy and others, under the statute 8 & 9 Vict. c. 127, are so important that our observations on their effect and construction will be more conveniently reserved for our next number.

## NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

### LOCAL ACTS.

#### 9 & 10 VICT. c. 106.

An Act for making Preliminary Inquiries in certain Cases of Applications for Local Acts. [28th August, 1846.]

1. *Notice to be given to the Commissioners of Woods, &c. of intention to apply for an act of parliament.*—Whereas it is expedient that facilities should be given for procuring more complete and trustworthy information previous to inquiries before either house of Parliament on applications in certain cases for local acts: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that in any case where it is intended to make an application to Parliament for an Act for the establishment of any waterworks, or for draining, paying, cleansing, lighting, or otherwise improving any town, district, or place, or for making, maintaining, or altering any burial ground or cemetery, or for continuing, altering, or enlarging any of the powers or provisions contained in any act or acts relating to any of the purposes aforesaid, a notice in writing of such intention to apply to parliament in the next ensuing session for an act for any of the above objects shall on or before the last day of November, or in case such day shall fall on a Sunday, then on the day preceding, in each year, be sent or delivered to the office of the commissioners of her Majesty's woods, forests,

land revenues, works, and buildings; and such notice shall be signed by the promoters of such intended work, or by some person duly authorised on their behalf, and shall be accompanied by a statement in duplicate of the intended objects and provisions of the proposed act, and with such plans, sections, books of reference, or other documents, if any, as are required by the standing orders of either house of Parliament to be deposited at any public office.

2. *Commissioners of woods, &c. to appoint officer to make preliminary inquiry, and to report thereupon to parliament.*—And be it enacted, that in any case where such notice as aforesaid shall have been given to the said commissioners it shall be lawful for the said commissioners, on being satisfied with the security for payment of the expenses, as herein-after provided, within one calendar month from the time of their receiving such notice, to appoint, by writing under their hands or the hands of any two of them, one or more person or persons of competent skill to be a surveying officer for that purpose, who shall proceed to such town, district, or place, and make such local examination and survey of the district which such proposed act will effect, and of the neighbourhood thereof, and such inquiries relative to the extent of the provisions of the proposed act, and investigate such other matters relating thereto as the said commissioners shall order; and after such examination the said commissioners shall report thereupon to both houses of Parliament on or before the first day of March in each year.

3. *Notice of inquiry to be given by surveying officer.*—And be it enacted, That such surveying officer shall give fourteen days public notice of the time and place when and where he will attend within such town, district, or place for the purpose of making such examination, by advertisement in the public papers usually circulated in the town, district, or place, or by affixing such notice on the public buildings or places where public notices are usually affixed, or in such other manner as shall appear to him sufficient to make his appointment generally known in such town, district, or place.

4. *Power to summon certain persons, and to examine upon oath.*—And be it enacted, That such surveying officer shall be empowered to summon before him the promoters of such intended work, or any person on their behalf, or any person or persons whose name or names shall be signed to any notice of an intended application to parliament sent or delivered to the commissioners of her Majesty's woods, forests, land revenues, works, and buildings, under the provisions of this act, and to require them to produce copies of all such surveys, plans, sections, estimates, and other documents relating to such intended application as are ordered to be deposited at any public office in compliance with any standing orders of either house of Parliament; and such surveying offi-

cer may require any overseer or other person having the custody of any map or survey made in pursuance of the provisions of any act of Parliament, or of any book containing any rate made for the relief of the poor in any parish; or for any purpose or place wholly or in part within any district over which such examination shall extend, to produce such map, survey, or book, and to allow the same to be inspected by such surveying officer; and such surveying officer shall have power to administer an oath to such overseers or other persons, and to the promoters, and to any other persons examined on their behalf, and to any persons who may present themselves before such surveying officer for examination by him; and all such persons so examined shall be required to answer upon oath all such questions as may be put to them by such surveying officer touching any matter upon which such surveying officer may deem it necessary to examine such persons, in pursuance of the duties imposed upon him under the authority of this act; and any such person, being duly summoned by such surveying officer, who shall wilfully neglect or refuse to attend such summons, or to produce such plans, sections, maps, books, or other documents as he may be required to produce under the provisions herein-before contained, or to answer upon oath such questions as may be put to him by such surveying officer under the powers herein contained, shall be liable to forfeit and pay a penalty not exceeding five pounds.

5. *Penalty may be recovered before justices.*—And be enacted, That such penalty may be recovered before any two or more justices having jurisdiction within such town, district, or place; and on conviction of the offender, and in default of payment of any such penalty, such justices shall be empowered and required to cause the same to be levied by distress and sale of the goods and chattels of the offender, by warrant under their hands and seals; and such penalty shall be paid to the overseers of the parish or township within which such conviction shall take place, in aid of the rate for the relief of the poor.

6. *Expences of inquiry to be paid by the promoters. Certificate of surveying officer.*—And be it enacted, That all the costs, charges, and expences attending the said local examination and survey, together with such sums as the said commissioners shall fix for the remuneration of the said surveying officer, shall be paid by the promoters of the said intended application, and the amount of such expences shall in all cases be ascertained by the said surveying officer; and it shall be lawful for the said commissioners, previous to the appointment of any such surveying officer to make an examination under the provisions herein-before contained, to require the said promoters to deposit any sum of money, or to give such other security for the payment of the said costs, charges, and expences, as to the said commissioners shall seem fit; and the certificate of the said surveying officer, cer-



ifying the amount of expenses so incurred in such local examination, shall be taken as proof in all proceedings at law and in equity of the amount of the costs incurred in such examination: provided always, that it shall not be lawful for any such surveying officer to include in such certificate any charge for the attendance of any persons who may voluntarily present themselves before such surveying officer for examination by him under the provisions herein-before contained.

7. *Notices to be given to the Admiralty where applications relate to ports or navigable rivers.*

—And be it enacted, That where it is intended make application to parliament for an Act relating to any port or harbour, or to any tidal water, or to any navigable river, or in any manner directly or indirectly affecting the same, Notice thereof shall be given to the Lord High Admiral or to the lords commissioners for executing the office of Lord High Admiral in the manner herein-before directed for giving notice of the intention to make application to parliament for the other acts above specified to the office of her Majesty's woods, forests, land revenues, works, and buildings, and in all respects whatsoever the Lord High Admiral or the said lords commissioners shall make a similar inquiry and report, and shall perform all the same duties, and have all the same powers, with respect to the inquiry into such intended acts whereof notice is to be given to him or them, as is herein-before enacted in regard to the office of her Majesty's woods, forests, land revenues, works, and buildings, with respect to the acts whereof notice is to be given to such office, as amply, to all intents and purposes, as if all the provisions herein-before enacted in regard to the proceedings of such office with respect to such acts had been repeated word for word in regard to the Lord High Admiral or Lords Commissioners aforesaid, and to the acts whereof notice is required to be given to him or them.

8. *Interpretation of act.*—And be it enacted, That in this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there is something in the subject or context repugnant to such construction; (that is to say)

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

9. *Act may be amended, &c.*—And be it enacted, That this Act may be amended or repealed by any act to be passed in this present Session of Parliament:

## CONVEYANCING EXPENSES AFFECTING THE PRICE OF LAND.

In the evidence before Parliament and the Report on the Burdens on Real Property, which we noticed at pp. 137 and 282, ante, much stress is laid on the expense of

proving the title and preparing the conveyance of real property, and it is contended, that those expenses, forming a large burden on every transfer, considerably diminish the value of the property. It was stated, that whilst thirty years' purchase was all that could be obtained in England, in some parts of the Continent the price was so high as 40 or 50 years' purchase. Without questioning the fact, we doubted the cause to which it was ascribed, —deeming it quite inadequate to account for the vast difference in value.

We have just met with the following statements relating to the high price of land in *Germany, France, and Scotland*, which will be seen is occasioned, not by the moderation of the lawyer's charges, but the laudable pride of the peasant to better his condition.

### GERMANY.

"The pride of the German peasant is to be a small land-owner. The sacrifices made to gratify this longing are incredible, as is the tenacity with which he clings to his land in all changes of fortune. The price paid for small lots of land in the valley of the Wupper and the adjoining districts, would frighten an English farmer. From 500 to 700 dollars per morgen, or 117*l.* to 150*l.* per acre, is no unusual price for arable and meadow land. What interest he gets for his investment seems never to cross a peasant's mind. The rent of small patches adjoining these houses is not proportionably high, although dear enough; 10 or 12 dollars per morgen (2*l.* 10*s.* or 3*l.* per acre), is constantly paid in situations remote from the influence of towns. Building sites, especially those favourable for trade or manufactures, sell also as high as in England. The sum of 3,000 dollars was paid a few years back for about an acre and a half of ground, on which some zinc works now stand, at Duisburg. This was equal to 500*l.* per acre." *Benfield's "Industry of the Rhine."*

### FRANCE.

It is the great subdivision of the land in France, consequent on her law of equal succession, that is the main cause of the high price of land there. This is a fact too well recognised by the French themselves, and by foreigners acquainted with the country, to require to be pointed out at length. In France, there are now few large estates, and when these are brought to the market, either by the owners themselves, their heirs, or creditors, they are never exposed entire, but always in lots. Were they to be disposed of whole, so few great fortunes are there in France, that they would not fetch so much as in England; not more, certainly, than twenty years' purchase, if even so much; whereas, by being broken down into small portions, adapted to buyers of moderate or small capitals, a number of competitors start up for each, who, as

the lords have discovered, often give forty or fifty years' purchase. If land sells high, it will naturally be inferred that it also lets high in France; and the fact is actually so, as is incidentally noticed by Sismondi. Here the question arises; does the system of small properties and farms yield the greatest amount of net agricultural produce? This question has been solved affirmatively by French economists, statesmen, and agriculturists of the highest authority. It is more than twenty years since Mr. McCulloch, in the Edinburgh review, predicted speedy ruin to French agriculture from her law of equal succession; and since that time, it has been established by official reports, that the growth of wheat in France has been progressively increasing, and in a ratio higher than that of the population.—*Daily News.*

## SCOTLAND.

It is a fact corresponding to this, and tending to show a principle as concerned in it, that in the county of Kinross, where land is more subdivided than in any other county in Scotland, it bears a higher average rent than in any other portion of the country.—*Chamb. Edin. Jour.*

## UNQUALIFIED PRACTITIONERS IN BANKRUPTCY.

THE attention of the Incorporated Law Society should be directed to the removal of a grievous injury to the profession, by unauthorized persons practising at the Basinghall Street Bankrupt Court.

It has now become a habit with accountants and ignorant persons, professing to be connected with the official assignees or messengers of the court, to undertake the ordinary business of the solicitors of the court in working fiats, and obtaining discharges under the Insolvent Debtors' Acts, in many cases undertaking to do the business for barely money out of pocket; thus, as an instance,—to obtain a bankrupts' certificate for 5l. ! Where it is necessary that a solicitor's name should actually appear, there are professional men found, who for a couple of guineas, or less, allow the whole proceedings to be carried on as if they were originally instructed. I need not support these assertions by cases, names, or other reference. A slight inquiry by you of one or two persons intimately acquainted with the London bankrupt practice, will convince you of the great and growing evil.

A single opponent of the system would probably not effect all the good required; but, through your journal, the Incorporated Law Society (whose province it is to support the honour and interests of the profession) may perhaps be induced to obtain from the chief Judge of the Court of Review an order, to be affixed in the various offices connected with the Bankrupt Court, prohibiting, under pain of summary punishment, the illegal acts I have above referred to, and cautioning the profes-

sion and the public against the continuance of the practice. That would be no more than a simple act of justice to practising solicitors, and one that it appears to me the Law Society is bound to perform.

S. H.

## SELECTIONS FROM CORRESPONDENCE.

## ECCLESIASTICAL COURTS.

It is some time since I took up my pen to address you; I am now induced to do so in consequence of a subject of very useful legal reform, occurring to my mind from a peep into the "Clergy List of 1845."

I know not upon what principle the dignitaries of the church still retain to themselves the right of dispensing justice in Ecclesiastical Courts; when it is obvious, how much better it would be to their own establishment and congregations, they should attend solely to the discharge of their spiritual and parochial functions.

In former times the clergy forced their way into judicial and chancery offices, acting personally in some instances; in other cases employing a deputy: but those times are gone and past, and there are no such doings now. The clergyman is requested to reside on his benefice, and his reverend superiors to attend closely to their high duties as archbishops, bishops, deans, archdeacons, subdeacons, precentors, canons, or prebendaries; but it is not so with the chancellors of the 25 dioceses; in 18 of them a priest acts as an ecclesiastical judge, but eminent and learned civilians fill that responsible office in the remaining seven.

As the Small Debts' Act is likely to be the means of multiplying the lay-judges in this country, why should not an act of parliament be passed, requiring the chancellor of each diocese to be a layman who is a doctor in civil law? Surely, in point of legal qualification, no reverend chancellor will consider himself superior, or even to be equal, to such eminent civilians as Sir S. Lushington, Dr. Phillimore, Dr. Dealtry, Dr. Haggard, or Mr. Vernon! It is well known how highly their decisions and opinions are appreciated by the community at large!

A. B.

## DEED STAMP—INDORSEMENT.

Will you or some one of your experienced readers kindly satisfy the profession (I mean the doubting part of it) by stating, whether a deed relating to property in Middlesex, of itself within the prescribed number of folios, but exceeding it by the addition of the Registrar's certificate, requires an additional stamp? It is contended that it does not, although in practice it is sometimes done, for the deed is perfected by the execution by the parties duly attested and the subsequent registration of it, is optional and done more for future protection, than from absolute necessity

to perfect the deed. At all events it is submitted, that the omission of the Registrar's certificate on the deed would not render it inoperative, or deprive the purchaser of his protection, if actually registered, although such registration does not appear by endorsement on the purchase deed.

D. W.

## ANNUAL REGISTRATION OF ATTORNEYS.

THE time is now at hand to send in the annual declarations to the Law Society in order to obtain the registrar's certificate.

The following regulations should be attended to:—

The forms of declaration under the 6 & 7 Vict. c. 73, may be had on application at the office.

The members of the profession are requested to be particular in filling them up, either by themselves, their partners, or their London agents; and to send them to the office on as early a day as possible.

1. No declaration can be acted upon which does not contain all the particulars required by the act of parliament.

2. Every declaration must be delivered at the office six days before a certificate can be granted.

3. No certificate will be delivered out till Thursday, November 20th.

4. In the first six days, commencing on November 20th, certificates will be delivered only to such LONDON AGENTS as shall, in due time previously, have sent in the declaration of themselves and their country clients, accompanied by a list thereof, arranged in alphabetical order, and written on foolscap paper bookwise.

5. These six days will be appropriated among the LONDON AGENTS, according to the letter with which their surnames or those of the senior partner in the firm commence, in the following order:—

Those commencing with—

A or B,	Nov. 20.
C, D, E, or F,	" 21.
G, H, I, or J,	" 23.
K, L, M, N, O, or P,	" 24.
Q, R, or S,	" 25.
T, U, V, W, X, Y, or Z,	" 26.

6. On every day subsequent to November 26th, the certificates will be delivered to the rest of the profession,

## MICHAELMAS TERM EXAMINATION.

THE printed List of applicants for admission on the Roll of Attorneys comprises no less than 170, besides 10 who obtained Judges' Orders to add their names.

Of these, however, 36 have been already examined, and 3 have not given examination notices,—leaving 141 now to come up; and to that

number there is to be added 5 candidates who have given examination but not admission notices.

This is apparently a very large number, but according to the usual average, 20 or 30 will not qualify themselves for examination by leaving their testimonials in due time. It is to be recollected also, that the largest number generally come up in Michaelmas Term. In several recent Terms, the number has been considerably less than 100.

The testimonials are to be lodged on the 7th, or at latest by four o'clock on the 9th, and the Examination will take place on the 11th Nov.

## LOCAL AND PERSONAL ACTS, 9 & 10 VICTORIA.

DECLARED PUBLIC, AND TO BE JUDICIALLY NOTICED.

(Continued from p. 580.)

128. An Act for improving the Drainage of the Vallies of the Rye and Derwent in the North and East Ridings of the County of York.

129. An Act for making a Railway from Exeter to Exmouth, to be called "The Exeter and Exmouth Railway."

130. An Act for making a Railway from the Polloc and Govan Railway to the River Clyde and Harbour of Glasgow, with Branches, to be called "The General Terminus and Glasgow Harbour Railway."

131. An Act for amending the Acts relating to the London and South-western Railway Company; and to authorize the said Company to enter into Contracts and to complete Arrangements with certain other Railway Companies.

132. An Act for enabling the Norfolk Railway Company to purchase or lease the Lowestoft Railway, Harbour, and Navigation.

133. An Act to enable the Dundee and Arbroath Railway Company to make a Railway from their Line at Broughty to Broughty Ferry Castle, and another Railway from their Line at Geordies Burn to the Arbroath and Forfar Railway at Almeriecross.

134. An Act for making a Railway from Kintore to Alford, to be called "The Alford Valley Railway."

135. An Act for making a Railway from Dyce to Fraserborough, with a Branch to Peterhead, to be called "The Great North of Scotland (Eastern Extension) Railway."

136. An Act to enable the Edinburgh and Northern Railway Company to extend their Line of Railway from Cupar to Newport.

137. An Act for making a Railway from the Town of Oban to Crianlarich, in the County of Perth with a Branch to Lochlomond, to be called "The Scottish Grand Junction Railway."

138. An Act to enable the Edinburgh and

Northern Railway Company to make a Railway from their Line at Thornton to Dunfermline.

139. An Act to enable the Edinburgh and Northern Railway Company to make a Railway from Newburgh to the Central Railway at Hilton.

140. An Act to enable the Great Leinster and Munster Railway Company to extend their Railway to Clonmel.

141. An Act for making a Railway from and out of the Glasgow, Barrhead, and Neilston Direct Railway near to Pollokshaws to the Town of Strathaven.

142. An Act to enable the Glasgow, Barrhead, and Neilston Direct Railway Company to make Branch Railways to Thornliebank and Househill; and to amend the Act relating to such Railway.

143. An Act to enable the Glasgow, Paisley, and Greenock Railway Company to make a Branch Railway to the River and Frith of Clyde at or near Greenock, and a Pier or Wharf in connexion therewith.

144. An Act for extending, the Time for taking Lands, and for completing the Undertaking called "The Thames Haven Dock and Railway," authorized to be made by Two Acts passed in the Seventh Year of the Reign of His late Majesty, and the Sixth Year of the Reign of Her present Majesty.

145. An Act to enable the Bridgewater and Taunton Canal Company to make a Railway from Bridgewater to the Bristol Channel at or near Stolford in the County of Somerset, with Branches therefrom, and to make a Harbour at or near Stolford.

146. An Act for constructing Docks, Walls, Warehouses, and other Works at Toxteth Park in the County of Lancaster, to be called "The Herculeum Docks."

147. An Act to authorize the Sale of the Monkland Navigation to the Company of Proprietors of the Forth and Clyde Navigation.

148. An Act for making a Railway from the Borough of Cork through Blackrock to the Town of Passage West.

149. An Act to enable the Leeds and Thirsk Railway Company to make a Railway from Northallerton to the Stockton and Hartlepool Railway.

150. An Act to enable the Scottish Central Railway Company to make a Branch Railway by Alloa Ferry to Tillicoultry.

151. An Act to enable the Slamannan Railway Company to make Branch Railways to Bathgate and Jawcraig.

152. An Act to empower the London and Birmingham Railway Company to enlarge their Stations in London; and for other Purposes.

153. An Act for enabling the Leeds and Thirsk Railway Company to make certain deviations in the Line of the Saint Helens Branch of the said Railway.

154. An Act to enable the Leeds and Thirsk Railway Company to alter and extend the Line of Part of their Railway; and for other Purposes.

155. An Act for making a Railway from or

near the Ambergate Station of the Midland Railway, through Nottingham, to Spalding and Boston, with Branches therefrom, and for enabling the Company to purchase the Nottingham and Grantham Canals.

156. An Act to empower the Midland Railway Company to make several Branches from the Erewash Railway.

157. An Act to empower the Midland Railway Company to make a Railway from the Midland Railway at Clay Cross to join the Nottingham and Lincoln Railway, with Branches.

158. An Act for making a Railway from Ferryhill near Aberdeen to Aboyne, to be called "The Deeside Railway."

159. An Act for making a Railway from the Glasgow, Barrhead, and Neilston Direct Railway to the Town of Kilmarnock, with certain Branches therefrom, to be called "The Glasgow, Kilmarnock, and Ardrossan Railway," and to purchase the Ardrossan Railway and Harbour.

160. An Act to enable the Wilsontown, Morningside, and Coltness Railway Company to make a Branch to the Caledonian Railway.

161. An Act to enable the Wilsontown, Morningside, and Coltness Railway Company to improve their Line, and to make Branch Railways to Shotts and Climpny.

162. An Act to enable the Wilsontown, Morningside, and Coltness Railway Company to make a Branch Railway to the Town of Bathgate.

163. An Act to empower the Midland Railway Company to make a Railway from Nottingham to Mansfield.

164. An Act for making a Railway from Knaresborough to or near to the City of York, to be called "The East and West Yorkshire Junction Railway."

165. An Act for making a Railway from the Edinburgh and Glasgow Railway to the Scottish Central Railway, to be called "The Stirling-shire Midland Junction Railway."

166. An Act for making a Railway from the Great Western Railway at West Drayton to Uxbridge in Middlesex.

167. An Act for making a Railway from Wexford to Carlow.

168. An Act for extending and altering some of the Provisions of the Acts relating to the Great Leinster and Munster Railway.

169. An Act to empower the Norfolk Railway Company to make a Railway Communication between the Dereham Branch of the Norfolk Railway and the Towns of Wells and Blakeney in the County of Norfolk.

170. An Act for making a Railway from Royston to Hitchin.

171. An Act for making a Railway from Reading to Guildford and Reigate.

172. An Act for making a Railway from Chesterford to Newmarket, with a Branch to Cambridge.

173. An Act to enable the London and South-western Railway Company to make a Branch Railway to Farnham in the County of Surrey and Alton in the County of Southampton.

174. An Act to enable the London and South-western Railway Company to make a Branch Railway to Chertsey and Egham in the County of Surrey.
175. An Act to enable the London and South-western Railway Company to make a Branch Railway to Hampton Court Bridge in the County of Surrey.
176. An Act for making a Railway from the Scottish Central Railway at Dunblane by Doune to Callendar, to be called "The Dunblane, Doune, and Callander Railway."
177. An Act for making a Railway from Skipton to York, to be called "The Wharfedale Railway."
178. An Act for making a Railway from Stotfield and Lossiemouth Harbour to Elgin, Rothas, and Craigellachie, to be called "The Morayshire Railway."
179. An Act to enable the Monkland and Kirkintilloch Railway Company to make Branch Railways to Chapel Hall and the Glasgow, Garnkirk, and Coatbridge Railway.
180. An Act to enable the Scottish Railway Company to make a Branch Railway to Denny in the County of Stirling.
181. An Act for making a Railway, from the Yeovil Branch of the Bristol and Exeter Railway to or towards the Town of Crewkerne in the County of Somerset; and for amending the Acts relating to the Bristol and Exeter Railway.
182. An Act for vesting the Aylesbury Railway in the London and Birmingham Railway Company.
183. An Act to enable the Saint Helens Canal and Railway Company to make a Railway from the Township of Eccleston to the Township of Garston, with Branches therefrom, and Docks at Garston aforesaid, all in the County of Lancaster.
184. An Act for making a Harbour and Docks at Heysham on Morecambe Bay in the County of Lancaster, and a Railway in connexion therewith.
185. An Act to empower the Wakefield, Pontefract, and Goole Railway Company to make Three several Branch Railways.
186. An Act for erecting the Town or Village of Ardrossan and Places adjacent in the County of Ayr, into a Borough or Parony; for paving, lighting, and cleansing the same; for establishing a Police therein; and for other Purposes relating thereto.
187. An Act for enabling the Sheffield, Ashton-under-Lyne, and Manchester Railway Company to provide additional Station Rooms at Sheffield, and also to make a Branch Railway to Dukinfield, and to purchase and maintain a Branch already made from their Main Line to Glossop; and for other Purposes.
188. An Act to enable the Glasgow, Paisley, and Greenock Railway Company to make a Branch Railway to the Polloc and Govan Railway; and to amend the Acts relating to the said Railway.
189. An Act to enable the Scottish Central Railway Company to make certain Terminal Branches and other Works to the City of Perth.
190. An Act for making a Railway from the Edinburgh and Northern Railway at Markinch to Anstruther Bester, with a Branch to the Kirkland Works, to be called "The East of Fife Railway."
191. An Act to enable the Scottish Central Railway Company to make a Branch Railway to Crieff in the County of Perth.
192. An Act for making a Railway from the Manchester and Birmingham Railway, at Cheadle in the County of Chester to or near to the Ambergate Station of the Midland Railway in the County of Derby, to be called "The Manchester, Buxton, Matlock, and Midland Junction Railway."
193. An Act for enabling the Grand Junction Railway Company to make a Branch Line of Railway from Huyton to Warrington; and for amending the former Acts relating to the said Company.
194. An Act for making a Railway from the Town of Mallow to the Town of Fermoy.
195. An Act for making a Railway from the City or Borough of Limerick to the Borough of Ennis, with Branches to the Towns of Clare and Killaloe, and to join the Great Southern and Western Railway.
196. An Act to enable the Great Southern and Western Railway Company to extend their Railway from their present Terminus in the City of Cork to the River Lee in the same City.
197. An Act for making a Railway from the Great Southern and Western Railway at the Townland of Carne or Curraghane to the Town of Mountmellick.
198. An Act for completing a Railway Communication between the Town of Cloananel and the Great Southern and Western Railway at or near the Town of Thurles.
199. An Act for making a Railway from Dublin to Dundrum and Rathfarnham, to be called "The Dublin, Dundrum, and Rathfarnham Railway."
200. An Act for making a Railway from the Town of Mallow to the Town of Killarney, to be called "the Killarney Junction Railway."
201. An Act for making a Railway from the Glasgow, Barrhead, and Neilston Direct Railway to the Caledonian Railway.
202. An Act for making a Railway from Stirling to Dunfermline, with Branches to Tillicoultry and Alloa Harbour, to be called "The Stirling and Dunfermline Railway."
203. An Act to enable the Midland Railway Company to make a Railway from Burton-upon-Trent to Nuneaton, with Branches, and to purchase the Ashby-de-la-Zouch Canal.
204. An Act to consolidate the London and Birmingham, Grand Junction, and Manchester and Birmingham Railway Companies.
205. An Act to enable the Eastern Counties Railway Company to make a Railway from Epping to a Point of Junction with the Colchester Line of the Eastern Counties Railway at or near the Ilford Station thereon.
206. An Act to enable the Wishaw and Coltness Railway Company to make a Branch

**Railway from the Witham and Calne Railway to Mordinton, with a branch to Goodstock-hill.**

207. An Act for enabling the Newmarket and Berwick Railway Company to make a certain Branch Railway in the County of Northumberland.

208. An Act for making a Railway and Branch Railway, to be called "The Waterford, Wexford, Wicklow, and Dublin Railway."

209. An Act for making and maintaining a Railway from Templemore to Nenagh.

210. An Act to enable the Midland Great Western Railway of Ireland Company to make a Deviation in the authorized Line of the said Railway, and also a Branch Railway to the River Liffy.

211. An Act to enable the Kilmarnock and Troon Railway Company to let on Lease their Railway to the Glasgow, Paisley, Kilmarnock, and Ayr Railway Company; and to authorize the said Glasgow, Paisley, Kilmarnock, and Ayr Railway Company to alter Parts of the said Kilmarnock and Troon Railway, and to construct certain Branch Railways in connexion therewith.

212. An Act for empowering the Wakefield, Pontefract, and Goole Railway Company to construct a Jetty and other Works, and to provide a Station, Coal Staiths, and other Conveniences, at the Port of Goole; and for other Purposes relating to the said Port.

213. An Act for extending the Line of the Dublin and Kingstown Railway to the Bridge of Bray in the County of Dublin.

214. An Act to provide for the Repair of the Parish Church of South Leith in the County of Edinburgh, and for the Administration of the Property and Revenues thereof; to alter the existing Mode of electing a Minister to the Second Charge of the said Church and Parish; to confirm the Proceedings of the Heritors of the said Parish relating to the Purchase of a suitable House as a Manse; and to effect other Objects in connexion with the said Church and Parish.

215. An Act to enable the Chard Canal Company to convert into a Railway the Portion of the Chard Canal from Creech Saint Michael to Ilminster, all in the County of Somerset.

216. An Act for lighting with Gas the Town and Borough of Stockton and other Places in the Counties of Durham and York.

217. An Act for better supplying with Gas the City of Worcester and the Suburbs thereof.

218. An Act for regulating the Markets and Fairs in the Borough and Town of Yeovil in the County of Somerset.

219. An Act for providing Market Places and for regulating the Markets and Fairs in the Borough of Manchester in the County Palatine of Lancaster.

220. An Act for more effectually supplying with Water the City of Bath, and several Parishes and Places adjacent thereto.

221. An Act for better supplying with Water the Town and Borough of Newport in the County of Monmouth.

222. An Act for supplying with Water the City of Bristol and certain Parishes adjacent thereto in the Counties of Gloucester and Somerset.

223. An Act to amend the Acts relating to the Witham Navigation; and to reduce the Tolls on the said Navigation.

224. An Act to enable the Midland Great Western Railway of Ireland Company to make a Railway from Mullingar to Athlone.

225. An Act for better assessing and collecting the Poor Rates, Highway Rates, Borough Rates, County Rates, Lighting, Watching, and Cleansing Rates, and all other Parochial Rates, on small Tenements, in the Parish of Aston juxta Birmingham in the County of Warwick.

226. An Act for better raising and more securely constituting the Fund for the Relief of Widows and Children of Burgh and Parochial Schoolmasters in Scotland.

227. An Act for more effectually maintaining and repairing certain Roads in the Counties of Banff, Aberdeen, and Elgin.

228. An Act to enable the Dundee and Perth Railway Company to alter their Line at Inchyra and Lairwell, and to extend the same towards the Penitentiary at Perth.

229. An Act to enable the Caledonian Railway Company to make Branch Railways from the Castlecary Branch of the Caledonian Railway to the Glasgow, Garnkirk, and Coatbridge Railway.

230. An Act for enabling the Sheffield, Ashton-under-Lyne, and Manchester Railway Company to make Branch Railways from or in connexion with their Main Line of Railway to Whaley Bridge and Hayfield, to be called "The Whaley Bridge and Hayfield Branches."

231. An Act for vesting in the Grand Junction Railway Company and the Manchester and Leeds Railway Company the North Union Railway, and all the Works, Property, and Effects appertaining thereto.

232. An Act for making a Railway from Birmingham to Lichfield, to be called "The Birmingham, Lichfield, and Manchester Railway."

233. An Act for making a Railway from the Oxford and Bletchley Junction Railway to Buckingham and Brackley.

234. An Act to enable the London and Croydon Railway Company to construct a Branch to Deptford; and for amending the Acts relating to such Railway.

235. An Act for enabling the Newcastle and Darlington Junction Railway Company to purchase the Durham and Sunderland Railway and the Wearmouth Dock.

236. An Act for making a Railway from the Great Western Railway at Maidenhead in Berkshire to the Town of High Wycombe in the County of Buckingham.

237. An Act for making a Railway from Johnstone to the Bridge of Weir, with a Branch to Kilbarchan, to be called "The Ayrshire and Bridge of Weir Railway."

238. An Act for making a Railway from

Ashburton in the County of Devon to join the South Devon Railway.

39. An Act for extending the Line of the South Wales Railway, and for making certain Alterations of the said Railway, and certain Branch Railways in connexion therewith.

240. An Act for making a Railway from Gloucester to the Monmouth and Hereford Railway, and to the South Wales Railway at Awre, to be called "The Gloucester and Dean Forest Railway."

241. An Act for enabling the Hull and Selby Railway Company to lease and also to sell their Railway to the York and North Midland and Manchester and Leeds Railway Companies, or one of them; and to authorize the raising of additional Money by both or either of the last-mentioned Companies for those and other Purposes.

242. An Act for enabling the Great North of England Railway Company to lease and also to sell their Railway to the Newcastle and Darlington Junction Railway Company; and to authorize the raising of additional Money by the said last-mentioned Company for those and other Purposes.

243. An Act for vesting the Leicester and Swannington Railway in the Midland Railway Company.

244. An Act for carrying into effect certain Arrangements between the London and Birmingham Railway Company and the Company of Proprietors of the Birmingham Canal Navigations, and for granting certain Powers to the said respective Companies.

245. An Act for making a Railway from Newry in the Counties of Armagh and Down to Rostrevor in the County of Down, with a Branch to Warrenpoint in the same County.

246. An Act for making a Railway from Preston in the County Palatine of Lancaster to Clitheroe in the same County Palatine.

247. An Act to authorize the widening and Enlargement of Part of the Line of the York and North Midland Railway, or the Construction and Maintenance of a Railway adjoining thereto.

248. An Act to empower the London and Birmingham Railway Company to extend their Line at Leamington, and to enlarge their Stations at Coventry and Rugby; and for other Purposes.

249. An Act to enable the Caledonian Railway Company to deviate the Line of the said Railway in the Vicinity of Carlisle.

250. An Act to authorize the North Wales Mineral Railway Company to make certain Branches, and also to make a Deviation in the present Line of Railway.

251. An Act for the Consolidation of the Shrewsbury, Oswestry, and Chester Junction and the North Wales Mineral Railway Companies.

252. An Act for authorising the Sale of the Guildford Junction Railway, and for enabling the Purchasers to maintain the same, and to make and maintain a Railway therefrom to Godalming, and from the London and South-western Railway at Fareham to Portsmouth.

253. An Act for making a Railway from the Trent Valley Railway near Nuneaton to the Midland Railway in the Parish of Wigston Magna in the County of Leicestershire to be called "The Coventry, Nuneaton, Birmingham, and Leicester Railway."

254. An Act to empower the Midland Railway Company to extend their Line at Birmingham; and for other Purposes.

255. An Act to authorize the Purchase of the Oakham Canal by the Midland Railway Company.

256. An Act for making a Railway to connect the Saundersfoot Railway with the South Wales Railway, with the Harbour of Saundersfoot, and with the Town of Tenby, to be called "The Tenby, Saundersfoot, and South Wales Railway;" and for other Purposes.

257. An Act to enable the Lancaster and Carlisle Railway Company to extend and enlarge their Station and extend their Railway at Carlisle; and for other Purposes.

258. An Act to enable the Eastern Counties Railway to enlarge their Stations in London and at Stratford; and for other Purposes.

259. An Act for enabling the Huddersfield and Manchester Railway and Canal Company to divert their Main Line of Railway in Huddersfield, and to make a Branch therefrom near Cooper Bridge in the Township of Huddersfield.

260. An Act for making a Railway from the Great North of England Railway at Thirsk in the North Riding of Yorkshire to the Lancaster and Carlisle Railway at Clifton in Westmorland, and a Railway from Bishop Auckland in the County of Durham to the Lancaster and Carlisle Railway at Tebay in Westmorland, to be called "The Northern Counties Union Railway."

261. An Act for enabling the Grand Junction Railway Company to make certain Branch Lines of Railway, to be called "The Huyton and Aston Branch," "The Huyton, Prescott, and Saint Helens Branch," "The Warrington and Kenyon Branch," "The Warrington and Parkside Branch," and "The Edgehill and Huyton Branch;" and for amending the former Acts relating to the said Company.

262. An Act for altering, amending, and enlarging the Powers of the Leeds, Dewsbury, and Manchester Railway Act, 1845, and for authorizing certain Deviations from the Line and Levels of the said Railway, and for making and maintaining certain Branches and Extensions therefrom.

263. An Act for making a Railway from Glasgow to Airdrie, with Branches to the Clydesdale Junction Railway and to Mile End, to be called "The Glasgow, Airdrie, and Monklands Junction Railway."

264. An Act for enabling the Newcastle and Darlington Junction Railway Company to make certain Branch Railways in the County of Durham; and for other purposes.

265. An Act for making a Railway, with Branches therefrom, in the County of Lancaster, and West Riding of the County of York

to be called "The Blackburn, Clitheroe, and North-western Junction Railway."

266. An Act for making certain Branches from the Line of the Blackburn and Preston Railway in the County of Lancaster; and for amending the Acts relating thereto.

267. An Act for vesting in the Sheffield, Ashton-under-Lyne, and Manchester Railway Company the Peak Forest Canal and the Macclesfield Canal.

268. An Act to amalgamate the Sheffield, Ashton-under-Lyne, and Manchester Railway Company, the Sheffield and Lincolnshire Junction, the Sheffield and Lincolnshire Extension, and the Great Grimsby and Sheffield Railway Companies, and the Grimsby Dock Company.

269. An Act for consolidating the Dudley Canal Navigation with the Birmingham Canal Navigations; and for other Purposes.

270. An Act to amend the Ely and Huntingdon Railway Act.

271. An Act to enable the Company of Proprietors of the Manchester, Bolton, and Bury Canal Navigation and Railway to raise an additional Sum of Money; and to amend the Acts relating to that Company.

272. An Act for enabling the Leeds and Bradford Railway Company to alter the Levels of a Portion of the Line of their Railway in the Parish of Bingley in the West Riding of the County of Yorkshire.

273. An Act for amending the London and Blackwall Railway; and amending the Acts relating to the said Railway.

274. An Act to authorize the Shrewsbury, Oswestry, and Chester Junction Railway Company to make Railways to Crickheath and Wem, and to raise additional Capital for those Purposes.

275. An Act to authorize the Shrewsbury, Oswestry, and Chester Junction Railway Company to make an Extension into Shrewsbury, and certain Alterations and Deviations in their Line of Railway.

276. An Act to enable the East Lancashire Railway Company to alter the Line and Levels of such Railway, and to make Branches therefrom; and for other Purposes relating thereto.

277. An Act to incorporate the Huddersfield and Sheffield Junction Railway Company with the Manchester and Leeds Railway Company.

278. An Act to authorize certain Alterations in the Line of the Oxford, Worcester, and Wolverhampton Railway; and to amend the Act relating thereto.

279. An Act to enable the Furness Railway Company to extend their Line to Broughton and to Ulverstone, and to make certain Branches therefrom; and to amend the Act relating thereto.

280. An Act to amend "The Ipswich and Bury Saint Edmunds Railway Act, 1845;" and for making a Railway from the said Ipswich and Bury Saint Edmunds Railway from the said Ipswich and Bury Saint Edmunds Railway to Norwich, with a Branch therefrom.

281. An Act for making a Branch Railway

from the London and Brighton Railway in the Parish of Croydon to join the South-western Railway in the Parish of Wandsworth in the County of Surrey.

282. An Act to incorporate the Liverpool and Bury Railway Company with the Manchester and Leeds Railway Company.

283. An Act to consolidate and unite the London and Brighton and the London and Croydon Railway Companies, and the Undertakings belonging to them.

284. An Act for incorporating the Proprietors of the Sheffield General Cemetery in the Township of Ecclesall Bierlow in the Parish of Sheffield in the West Riding of the County of York, and for enlarging and improving the said Cemetery; and for other Purposes connected therewith.

285. An Act for supplying with Water the Town of Kilmarnock, Suburbs thereof, and Places adjacent.

286. An Act for the better supplying with Water the Town or Village of Heywood and Places adjacent thereto in the County Palatine of Lancaster.

287. An Act for better supplying with Water the Town and Parish of Chorley in the County Palatine of Lancaster.

288. An Act for supplying with Water the Towns of Airdrie and Coatbridge, and Places adjacent, in the County of Lanark.

289. An Act to amend the Municipal Labour of the said City and Municipal Districts; and for other Purposes in relation to the Municipality and Police of the said City.

290. An Act authorizing the Sale of the Cromford Canal and other Property of the Cromford Canal Company.

291. An Act to alter and extend the Provisions of the Acts for improving the Navigation of the River Severn.

292. An Act for improving, preserving, maintaining, and better regulating the Port and Harbour of Waterford; and for other Purposes relating thereto.

293. An Act for better lighting, paving, cleansing, draining, regulating, and improving the Borough of Bury in the County Palatine of Lancaster, and for otherwise promoting the Health and Convenience of the Inhabitants.

294. An Act for better lighting and improving the Borough of Belfast.

295. An Act for paving, lighting, cleansing, and otherwise improving the Town of Wath-upon-Deane in the County of York, and for removing and preventing Nuisances and Annoyances therein.

296. An Act for repealing an Act of the Parliament of Scotland passed in the Sixth Session of the First Parliament of King William (1696), intituled "An Act in favour of the Heritors adjacent to the Pow of Inchaffray," and for more effectually draining and improving Lands adjacent to the River or Stream called the Pow of Inchaffray, in the County of Perth.



## ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

## Courts of Common Law.

## IV. PLEADINGS.

## ABATEMENT.

1. *Provisional committee-men.*—*Joint contractors.*—In an action against one of several joint contractors, the defendant cannot plead in abatement the pendency of another action against another joint contractor. But he should first plead the nonjoinder of the co-contractor, and if a second action be brought against both, the pendency of the other action may be pleaded. *Henry v. Goldsey*, 32 L. O. 204.

2. *Affidavit of residence.*—The word "residence," in the 3 & 4 W. 4, c. 42, s. 8, means "domicile" or "home;" therefore, where a plea in abatement for nonjoinder of a co-contractor was verified by an affidavit stating that the party resided at a certain place which was in fact his home: *Held*, that the statute had been complied with, although the party was not then living there, but had gone abroad for a short time. *Lambe v. Smythe*, 32 L. O. 471.

## ACCORD AND SATISFACTION.

*Plaintiff* brought, defendant gave plaintiff, and he received from defendant, authority to receive, for defendant and as his agent, moneys exceeding the sum in the declaration mentioned, then due to defendant, and to pay himself thereout in full satisfaction and discharge of the promises, &c., and of all damages, &c.; and defendant at the time of giving such authority did at plaintiff's request entrust him with the sole collection of the said moneys, on the terms then assented to by plaintiff and defendant, that plaintiff should use reasonable diligence in endeavouring to collect the same, and defendant should not collect or endeavour to collect them otherwise than by the plaintiff's agency so created as aforesaid; that afterwards and before action brought, plaintiff had the option of receiving and might and ought to have received, the said moneys to an amount exceeding the present demand, in pursuance of the said authority, and had also the option of paying himself out of the moneys which he might have so received the amount so claimed in such satisfaction, &c.; and that plaintiff did not nor would use reasonable diligence, &c., in endeavouring to collect and receive the said moneys when he might have so received, and had the option of so receiving the same, but, while the said authority was in force, so negligently conducted himself in endeavouring to collect and receive the said moneys, that by reason thereof he did not receive the same or any part thereof, and thereby and without defendant's default or consent before action brought, the chance of the moneys or any part thereof being received by or on behalf of defendant became desperate,

297. An Act for better draining and improving certain Low, Marsh, and Fen Lands lying between Boston Haven and Bourne in the County of Lincoln, and for further improving the Navigation through such Lands.

298. An Act for amending Two several Acts passed respectively in the Second and Seventh Years of the Reign of her present Majesty, for draining and embanking certain Lands in Lough Swilly and Lough Foyle, in the Counties of Donegal and Londonderry.

299. An Act for regulating the Municipal Government and Police of the Royal Burgh of Rothesay.

300. An Act for making a Railway, to be called "The South Staffordshire Junction Railway," with Branches.

301. An Act for enabling the Leeds and Bradford Railway Company to make a Junction Line at Bradford in the West Riding of the County of York.

302. An Act to unite and consolidate the Blackburn and Preston Railway Company with the East Lancashire Railway Company.

303. An Act for making a Railway from Newport to Abergavenny and Hereford, with Branches therefrom.

304. An Act for making a Railway from Sheffield to Gainsborough, with Branches.

305. An Act to enable the South-eastern

306. An Act to enable the Manchester and Leeds Railway Company to make several Branch Railways, and to authorize the Amalgamation of the Preston and Wyre Railway, Harbour, and Dock Company with the Manchester and Leeds Railway Company.

307. An Act for making a Railway from Shrewsbury to Wolverhampton, with a Branch, to be called "The Shrewsbury and Birmingham Railway."

308. An Act for making a Railway from Shrewsbury to Wolverhampton, to be called "The Shrewsbury, Wolverhampton, and South Staffordshire Junction Railway."

309. An Act to empower the London and Birmingham Railway Company to make a Branch from the said Railway to the Blisworth and Peterborough Branch thereof.

310. An Act to enable the Blackburn, Darwen, and Bolton Railway Company to alter the Line of Part of their Railway.

311. An Act to enable the Midland Railway Company to alter a Portion of the Leicester and Swannington Railway, and to make certain Branches.

312. An Act for amending an Act relating to the Liverpool and Bury Railway, and for making Branches therefrom.

313. An Act to authorize certain Alterations and Extensions of the Line of the Wilts, Somerset, and Weymouth Railway.

314. An Act to enable the Caledonian Railway Company to form certain Branch and Terminal Railways in the Vicinity of Glasgow.

[To be concluded in our next Number.]

and the said moneys thereby were and are lost to him. *Held*, on general demurrer, a bad plea of accord and satisfaction. *Gifted v. Whitaker*, 6 Q. B. 249.

2. To assumpsit for goods sold and delivered, the defendants pleaded, that at the request and by the direction of the plaintiff, they delivered the goods to one K. on a day named, and that it was "then," to wit, on the day and year aforesaid, in consideration thereof agreed by and between the plaintiff and the defendants, that the plaintiff should accept such delivery to K. in full satisfaction and discharge, &c., and that the plaintiff did "then" accept such delivery in full satisfaction and discharge: *Held*, on special demurrer, that the plea was bad for not showing with sufficient certainty that the agreement by the plaintiff to accept the delivery to K. in full satisfaction, &c., was antecedent to, or at least contemporaneous with, the delivery to K. *Stead v. Poyer*, 3 D. & L. 209.

#### ACTION.

See *Notice of*.

#### AGREEMENT.

*Construction*.—The plaintiff, a schoolmaster, in 1842 contracted with the defendant to rent of him a house and school-room at the rent of 35*l.* a year; and it was further agreed between them, that, "unless death or continued ill health in either case should take place," the defendant promised to provide two bed-rooms over the intended school-room, but not before the year 1844; and when such rooms should be provided, the plaintiff agreed to pay for them an additional rent of 5*l.* a year. In an action on this agreement, the declaration alleged as a breach, that although the whole of the year 1844, except a few days, had elapsed, and although the defendant had not been prevented by ill health, he had not, although often requested, provided the two bed-rooms: *Held*, on motion in arrest of judgment, after verdict for the plaintiff, that the "continued ill health in either case" meant ill health of either of the parties, and therefore that the declaration was bad, for not averring that there had been no continued ill health on the part of the plaintiff. *Ireland v. Harris*, 14 M. & W. 432.

And see *Composition*.

#### AMENDMENT.

See *Assault*; *Replication*, 3.

#### ARBITRATOR.

See *Several Issues*.

#### ARREST OF JUDGMENT.

See *Consideration*, 2.

#### ASSAULT.

*Amendment*.—In an action for assaulting the plaintiff, the defendants pleaded, that the plaintiff was beating "a certain boy whose name is to the defendants unknown," and that the defendants, to prevent his beating "the said boy," quietly laid their hands on him. *Replication*, that "the said boy" in the plea men-

tioned "was one Barnes W., and was and is the lawful son of the plaintiff," of the age of 10 years, and that "the said Barnes W." refused to obey his lawful commands, whereupon the plaintiff moderately chastised him. *Rejoinder*, that the plaintiff, at the time when, &c., was beating "the said Barnes W." with more violence than was proper and reasonable. *Rejoinder*, that the plaintiff "did not beat," &c., the said Barnes W. "with more violence than was proper and reasonable." On the part of the plaintiff, evidence was given, that the plaintiff, just before the defendants interfered with him, had been beating his son Barnes W., who was 10 years old, with a strap, but not immoderately; but the last witness for plaintiff stated that the plaintiff had another son, aged 8. It was proved for the defendants, that, after the plaintiff had beaten his eldest son, Barnes W., he began beating the younger, when the defendants laid hold of him. *Held*, that, on these pleadings, the issue was limited to the question of the excessive beating of Barnes W., and that anything the plaintiff did to the younger boy was not in issue, and the judge at the trial would not allow any amendment as to the name of Barnes W., as the two boys had both been beaten, and if the issue had been different the plaintiff might have adduced other evidence as to the extent of the beating of the younger boy. *Winterburn v. Brooks*, 2 C. & K. 16.

#### ASSUMPSIT.

*Condition*.—*Release*.—*Conveyance*.—*Mortgage*.—Assumpsit upon an agreement, whereby, after reciting that one W. in his lifetime mortgaged certain premises to R. and B. to secure 3,500*l.*; that R. and B. required W. to procure the plaintiff to join him in a bond as a collateral security for that sum and interest; that the defendant had, since the death of W., taken upon himself the management of the estate of W., and had paid to R. and B. 3,370*l.*; that the plaintiff had been called upon as surety, and had paid to R. and B. 130*l.*; that the defendant had repaid him 48*l.*, leaving 82*l.* due; that the defendant had agreed to pay the plaintiff the 82*l.* out of the moneys which might arise from the sale of the mortgaged premises, and in the meantime to appropriate the rents towards payment of the same, as the plaintiff had a lien upon the premises for the same; that the defendant had requested the plaintiff to release and convey all his estate and interest in the premises to A. and L., and that he had already done, reserving to himself a lien on the said property; it was witnessed that, in consideration of the plaintiff's having paid the 130*l.* to R. and B. in part discharge of the mortgage, and in consideration of his having released and conveyed all his estate and interest in the premises to A. and L., and in order to secure to the plaintiff the repayment of the 82*l.*, the defendant undertook and agreed with the plaintiff to pay him the same, with interest, out of the proceeds of the premises when sold, and in the meantime to appropriate the rents in

liquidation of the same." The declaration then stated that, in consideration of the premises, the defendant promised the plaintiff to perform the agreement, and alleged for breach that, although the defendant had received rents to a sufficient amount, he had failed to pay. *Held*, that inasmuch as the declaration did not show that the plaintiff had any interest in the premises, except that which he reserved, his release and conveyance, though executed at the defendant's request, formed no legal consideration for the promise alleged to have been made by the latter. *Kaye v. Dutton*, 7 M. & G. 807.

Case cited in the judgment: *Edwards v. Baugh*, 11 M. & W. 641.

#### ATTORNEY.

See *Execution*.

#### AVERMENT.

See *Execution*; *Indictment*, 1.

#### AWARD.

See *Mutual Promises*.

#### BILL OF EXCHANGE.

1. *Averring presentment*.—Assumpsit by indorsee against acceptor of a bill of exchange, accepted "payable at C. & Co.'s bankers, London."

Demurrer, on the ground, that as an acceptance payable at a banker's generally, without the restrictive words of stat. 1 & 2 G. 4, c. 78, "and not elsewhere," is a general acceptance, and ought to be so declared upon, therefore the declaration, being upon an acceptance payable at a banker's, must be understood to mean an acceptance payable at a banker's and not elsewhere, and was bad for not averring presentment at the banker's.

*Held*, (on error in the Exchequer Chamber,) that such averment was unnecessary, as the effect of such an acceptance as that declared upon was to make the presentment at the banker's a good presentment, but not to make presentment there necessary, and therefore that the declaration was good. *Halstead v. Skelton*, 1 D. & M. 664.

2. *Judgment non obstante veredicto*.—*Departure*.—A declaration alleged that T. made his bill of exchange, and thereby required G. & Co. to pay to the order of the defendant 200*l.*: that the defendant indorsed the bill to the plaintiff; and that G. & Co. did not pay it, although it was duly presented to them for payment. Plea, that after the indorsement to the plaintiff, and before it was due, he indorsed it to some person unknown, who presented it to G. & Co. for acceptance; that G. & Co. refused to accept it; and that the defendant had no notice of non-acceptance. On motion to enter judgment for the plaintiff, *non obstante veredicto*; *Held*, that the plea was good.

*Semble*, that it would have been a departure to have replied that the person unknown indorsed the bill to the plaintiff for value, and that the plaintiff had no knowledge of the dishonour by non-acceptance. *Barnett v. Benson*, 3 D. & L. 274.

#### COMPOSITION.

*Agreement*.—The plea to a bill of exchange alleged an agreement on the part of the defendant with the plaintiff and divers other persons, that they would accept a composition. It appeared in evidence that there were two creditors to whom the agreement had never been communicated; and the learned judge was of opinion that the plea was not proved.

*Held*, on motion for a new trial, that the plea was not supported by the evidence, and that a plea setting out an agreement for a composition should *prima facie* show that all creditors agreed to the composition, except in cases where the plea specifies the particular creditors with whom the arrangement is made. *Brown v. Dakin*, 32 L. O. 276.

#### CONSIDERATION.

1. *Description of Contract in declaration*.—An agreement by plaintiff, (an attorney,) defendant and B. set forth that, "in consideration" of B. having agreed to pay to defendant his claim against B., and certain costs, out of the proceeds to arise from the recovery by B. in an action of B. against J., defendant undertook to pay plaintiff all costs incurred by him in prosecuting the action of B. against J., plaintiff thereby agreeing with defendant to bring the same.

*Held*, that, in assumpsit on this agreement, the consideration was rightly described to be that plaintiff, at the request of defendant, would, with B.'s assent, prosecute the action of B. against J. *Daily v. Poolly*, 6 Q. B. 494.

2. *Arrest of judgment*.—Assumpsit. The declaration alleged, that "there had been and then were divers accounts between the plaintiff and the defendant, which accounts were open and unsettled," and that there were divers disputes between the plaintiff and the defendant touching the said accounts, and that the plaintiff claimed of the defendant that he was indebted to him in a sum of money, and that the defendant claimed of the plaintiff that he the plaintiff was indebted to the defendant; and then that it was agreed that each party should withdraw his claim, and that the defendant should pay the plaintiff an annuity of 6*l.* for life. It then alleged, that in consideration that the plaintiff would withdraw his claim, the defendant promised to pay the annuity. Breach, non-payment of the annuity. Plea, *non assumpsit*. *Held*, on motion in arrest of judgment, that the declaration disclosed a sufficient consideration on which to maintain an assumpsit on the defendant's promise. *Llewellyn v. Llewellyn*, 3 D. & L. 318.

#### CONTRACT.

See *Consideration*.

#### CHURCH RATE.

*Citation*.—A citation against a parishioner, charging him, with that he "wilfully and contumaciously obstructed, or at least refused to make or join, or concur in making of a sufficient rate for providing funds to defray the expense of the necessary repairs of the Church."

blished Church, does not contain a sufficient allegation of an offence cognizable by an Ecclesiastical Court.

Where the parishioner had appeared under protest to such a citation, and his protest having been overruled, had been ordered to appear absolutely, a declaration in prohibition held good on demurrer, on the ground that the citation was insufficient to give jurisdiction, and the application not premature. *Frances v. Steward*, 1 D. & M. 748.

Cases cited in the judgment: *Greenwood v. Greaves*, 4 Hag. Ecc. R. 77; *Rogers v. Davenant*, 1 Mod. 194, 336; *Cooper v. Wickham*, 3 Curt. 303; *Steward v. Francis*, 3 Curt. 323, 326, 327.

#### COVENANT.

1. *Non-repair*.—*Semble*, in covenant for non-repair, the declaration ought to state the term for which the premises were demised. *Turner v. Lamb*, 14 M. & W. 412.

Case cited in the judgment: *Vivian v. Campion*, 1 Salk. 141.

2. *Joint or separate action*.—A declaration in covenant stated, that by indenture of lease, Sir E. W. and J. A. A., (who were seised in fee of an undivided fourth part of the premises in trust for E. M. F.), E. F. and E. M. F., his wife, (the *cestui que trusts*), M. W., who was seised in fee of another undivided fourth part, W. T., who was seised in fee of half, and G. T. and S. T., who had equitable interests in that half, jointly demised, according to their several estates, rights, and interests in certain coal mines, to the defendant and two others, yielding and paying certain rents to the said E. F., E. M. F., Sir E. W., J. A. A., M. W., S. T., G. T., and W. T. respectively, and to their respective heirs and assigns, according to their several and respective estates, rights, and interests in the premises; that the defendant and the two other lessees covenanted with all the parties, and each and every of them, their and each and every of their heirs, executors, administrators, and assigns, to repair the premises, and to surrender them in good repair to the lessors, their heirs and assigns, respectively, at the end of the term, and to work the mines properly. The declaration then deduced to the plaintiff a title to the moiety of the said W. T., and alleged as breaches the non-repair of the premises, and the improper working of the mines. Plea, that J. A. A. was the survivor of all the covenantors: *Held*, that the covenants were joint, and not several, and that the surviving covenantor ought to have brought the action.

*Quere*, whether one of the several tenants in common, lessors, can sue on a covenant to repair made with all. *Bradburn v. Botsfield*, 14 M. & W. 569.

Cases cited in the judgment: *Anderson v. Martindale*, 1 East, 497; *Sorsbie v. Park*, 12 M. & W. 146; *James v. Emery*, 2 Moo. 195; *Hopkinson v. Lee*, 14 Law J. N.S. (Q. B.) 104; *Kitchen v. Buckley*, Sir T. Raym. 80, 1 Keb. 563; 1 Sid. 157, 1 Lev. 109.

And see *Limitations, Statute of*.

#### DE INJURIA.

See *Duplicity*, 2.

#### DETINUE.

*Traverse of delivery to defendant*.—In a declaration in *detinue*, laying the property in the plaintiff, the common averment, that plaintiff delivered the chattels to defendant to be redelivered on request, is not material or traversable. *Whitehead v. Harrison*, 6 Q. B. 423.

Cases cited in the judgment: *Jones v. Dowle*, 9 M. & W. 19; *Mason v. Farnill*, 12 M. & W. 674; *Gledstone v. Hewitt*, 1 Cro. & J. 565; 1 Tyr. 445; *Walker v. Jones*, 2 Cro. & J. 672; 4 Tyr. 915.

#### DISTRESS.

1. *Excessive and illegal*.—*What traverse material*.—Declaration in case alleged, in all the counts, that plaintiff held a messuage and premises, with the appurtenances, as tenant thereof to defendant, at a rent therefore payable by plaintiff to defendant; and it complained in the first count, that defendant took plaintiff's goods as and for a distress for alleged arrears of the said rent, whereas no rent was due; in the second count, of an excessive distress for arrears of rent claimed to be due for the said tenements; in the third count, of an irregular sale of goods seized as a distress for alleged arrears of the said rent.

Defendant, as to all the counts, traversed the holding *modo et forma*.

*Held*, (1.) That the traverse was not immaterial; (2.) That it was not too large, as putting in issue the tenancy of all the premises mentioned in the several counts. *Yates v. Tearle*, 6 Q. B. 282.

Case cited in the judgment: *Ireland v. Johnson*, 1 New Cas. 162.

2. *Insufficiency*.—Count in trover for goods and chattels. Plea justifying the taking of them under a distress for rent. Replication, that the defendant had made a former distress for the same rent, on goods of sufficient value to satisfy the distress, and might have fully satisfied the rent out of the same; but that he wrongfully and vexatiously refused and omitted so to do. Rejoinder, that the goods and chattels taken under the former distress were not of sufficient value to satisfy the rent, and that the defendant afterwards lawfully abandoned and put an end to the distress, and that the rent was still in arrear. Sur-rejoinder, that the goods were of sufficient value. *Held*, on demurrer, that the replication was a good answer to the plea; for a landlord could not make a second distress for the same rent after wantonly abandoning a prior distress, where the goods taken under the first distress were of sufficient value to satisfy the rent. *Held*, also, that the plaintiff was entitled to judgment on these pleadings; for either the sur-rejoinder was good, if the rejoinder were to be read so as to make the insufficiency of the goods dis-trained the ground for abandoning the distress, or if it could not be so read, the rejoinder was bad for not shewing any lawful ground for re-

linquishing the first distress and taking a second, so as to answer the matters alleged in the replication. *Dawson v. Cropp*, 3 D. & L. 225.

Cases cited in the judgment: *Lear v. Edmonds*, 1 B. & A. 157; *Lingham v. Warren*, 2 B. & B. 36, S. C. 4 Moore, 409; *Hudd v. Ravenor*, 2 B. & B. 622, S. C. 5 Moore, 342; *Anon. Cro. Eliz.* 13; *Smith v. Goodwin* 4 B. & Ad. 413; *Lear v. Caldwell*, 4 Q. B. 123; *Wallis v. Savill*, 2 Lutw. 1532.

#### DUPLICITY.

1. *Promissory note*.—*Videlicet*.—In an action of debt on a promissory note the declaration stated, that the defendant promised to pay the plaintiff or his order 690*l.*, on a day not laid under a *videlicet*, and thereupon the defendant agreed to pay the amount of the said note to the plaintiff on request. *Held*, not double, and that it sufficiently appeared by reference to the commencement of the action that the note had become due, without the usual allegation "which period has now elapsed." *Shepherd v. Shepherd*, 3 D. & L. 199.

Cases cited in the judgment: *Fussord v. Peck*, 9 M. & W. 196; *Stevens v. Underwood*, 4 Bing. N. C. 655, S. C. 6 Scott, 402; 6 Dowl. 737; *Owen v. Waters*, 2 M. & W. 91, S. C. 5 Dowl. 324; *Galway v. Ross*, 6 M. & W. 291, S. C. 8 Dowl. 239; *Abbott v. Auldett*, 1 M. & W. 209; 4 Dowl. 759.

2. *De injuriâ*.—*Factor*.—*Pledge*.—*Demurrer*.—To trover by A. against B., for bales of goods, B. pleaded that C. was the factor of A., and was, as such factor, intrusted by A. with the dock-warrants for the delivery of the bales; that C. applied to B. for an advance of money upon the pledge of the bales; that it was agreed between B. and C. that C. should pledge the bales with B. as a security for the money, which B. agreed to advance to C.; that in pursuance of this agreement C. delivered the dock-warrants to B., and B. advanced the money, without notice that C. was not owner of the bales. A. replied, that C. was not intrusted with the dock-warrants, nor did C. agree with B. for the pledging of the bales, *modo et formâ*.

*Held*, upon special demurrer, that the replication was bad for duplicity, inasmuch as the denial of either of the facts traversed by the replication would have been an answer to the plea.

But, after argument and after the opinion of the court had been pronounced, the plaintiff had leave to amend. *Bonzi v. Stewart*, 7 M. & G. 746.

Cases cited in the judgment: *Robinson v. Raley*. 1 Smith Lea. Ca. 247; *De Wolf v. Bevan*, 13 M. & W. 160, 2 D. & L. 345.

3. The first count of a declaration stated, that whereas the defendant had become and was tenant to the plaintiff of certain rooms, on the terms that the defendant should not allow any nails to be driven into the walls, and that if any damage should arise from his so doing, he should pay the costs of repairing the same

on his vacating the premises; and that in consideration thereof, the defendant promised the plaintiff not to allow any nails to be driven as aforesaid, and that if any damage should arise therefrom, he would pay the costs of repair. Breach, that defendant pulled down bells, and drove nails into the walls, and that the costs of repairing the injuries amounted to 15*sh.*; yet the defendant had not paid that sum to the plaintiff. Plea, that after the making of the promise so far as relates to the driving of the nails, the defendant did pay the costs of repairing the injuries occasioned thereby. *Held*, on special demurrer, that the plea was bad for professing to answer the whole count and answering but a part; and that the breach in the first count properly alleged non-payment of the costs to the plaintiff; and that the count was not bad for emitting to state that the defendant became tenant at the request of the plaintiff.

The second count of the declaration alleged, that in consideration that the plaintiff would permit a brass plate to be fixed on the outer door of the premises, the defendant promised to cause a new door to be put up at the expiration of the tenancy: breach, that he did not do so. Plea to the second count, that before any cause of action accrued the defendant offered to cause a new door to be affixed, but that the plaintiff refused to allow him to do so, and discharged him from carrying the said agreement into execution. *Held*, on special demurrer, that the plea was bad for duplicity. *Dietrichsen v. Giubilei*, 3 D. & L. 293.

Case cited in the judgment: *Brown v. Crump*. 1 Marsh. 567.

4. In assumpsit for money had and received, a plea that the money was the amount of a prize in an illegal lottery held by the defendant, and that he paid over the amount to J. S., whom he conceived to be the winner, and who was entitled to receive and to retain the money, is bad for duplicity. *Homes v. Lock*, 1 C. B. 524.

#### EXECUTION.

*Averment*.—The declaration stated that the defendant and A. were in partnership as attorneys, and in consideration that the plaintiff would retain them as such attorneys, to conduct an action at the suit of B. against one L. for negligent driving, the defendant and his partner promised to fulfil their duty as such attorneys in and about prosecuting the said action, and recovering damages: it then alleged that the defendant and his partner did, under the said retainer, commence an action against L., and such proceedings were thereupon taken that B. recovered judgment against L. for 5*l.* 1*5s.*: that afterwards the defendant and his said partner, as such attorneys as aforesaid, for obtaining satisfaction of the said damages, sued out a writ of *f. fa.*, to which the sheriff returned that he had levied 9*l.*, part of the damages, *nulla bona* as to the residue; that the defendant and his said partner, as such attorneys as aforesaid, for obtaining satisfaction of said residue, issued a *ca. an.* by virtue whereof

*L.* was imprisoned, and paid the residue of the damages to the governor of the gaol, who paid the same to the defendant and his partner, as such attorneys as aforesaid: that before they received the same they sent, as such attorneys as aforesaid, to the gaoler a discharge of *L.* out of custody, by virtue whereof he was discharged. Breach, that although the defendant and his partner received the said damages, and the plaintiff duly paid to them as such attorneys as aforesaid, their costs and charges of prosecuting the said action, yet they had not paid to *B.* or the plaintiff, the residue of the said damages. *Semble*, that the declaration was bad on special demurrer, for not alleging that the execution was sued out within a year and a day after judgment. *Bevis v. Hulme*, 3 D. & L. 309.

#### FOREIGN JUDGMENT.

In a declaration in debt on the judgment of a foreign court, it is not necessary to state that the court had jurisdiction over the parties or the cause. *Robertson v. Struth*, 1 D. & M. 772.

Cases cited in the judgment: *Walker v. Walker*, 1 Doug. 1; *Sinclair v. Fraser*, 1 Doug. 4, 6.

#### GENERAL ISSUE.

*Assumpsit* against *E.* and *H.*, attorneys, for money had and received. Plea, that plaintiff had retained and employed *E.* as his attorney, and was indebted to him for work, &c., and thereupon plaintiff and defendants agreed that, in lieu of the sole retainer of *E.*, defendants should be jointly retained and employed by plaintiff as his attorneys, and that they should have a lien upon all moneys which they should receive for plaintiff in the course of such employment, to the amount of all debts that then were or thereupon should be due from plaintiff to *E.* solely or to defendants jointly in respect of the said retainers and work, &c., respectively; and that they should hold and apply the same on account and in discharge of such debts to *E.* or to defendants jointly, and thereout pay to *E.* and to defendants the said debts respectively.

Averment that defendants, on such joint retainer, did work, &c., for plaintiff; and there became due and was still due from him to them in respect thereof a certain sum, which, together with the said debt to *E.* exceeded the amount claimed in this action: that defendants received the amount so claimed to the use of plaintiff in the course of their said retainer and employment as the attorneys of plaintiff, and under and by virtue of their said retainer and employment, and subject to the said lien, and held and applied part thereof (viz. &c.) on account and in discharge of the debt due to *E.*, and paid him the same, and the residue (viz. &c.) on account and in discharge of the debt due to defendants, and paid themselves the same.

*Held*, a bad plea, as substituting a different contract for that declared upon, and consequently amounting to the general issue. *Williams v. Vines*, 6 Q. B. 246.

#### INDICTMENT.

1. *Averting overt acts.*—*Semble*, that an indictment charging the defendants with conspiring together to cheat and defraud certain subjects of the Queen, being tradesmen, of goods and chattels, is sufficient without naming the tradesmen or alleging overt acts.

An indictment, after charging as above, proceeded to allege that *A.*, one of the defendants, in pursuance of the conspiracy, fraudulently obtained on credit goods from certain tradesmen (named) and other tradesmen whose names are unknown; that *A.*, in further pursuance of the conspiracy, procured these goods to be delivered at her house; that they were not paid for; that the defendant, in further pursuance of the conspiracy, pretended that certain fictitious debts were due from *A.* to the other defendants respectively, and caused actions to be commenced and judgments obtained, and writs of *f. fa.* issued, by virtue of which the goods so obtained were taken in execution to satisfy the fictitious debts, and that the defendants did in this manner unlawfully cheat and defraud the before-mentioned tradesmen. *Held*, that if the charging part had been insufficient, the overt acts thus stated would have supported it, and that the concluding allegation was not a statement of a separate offence, (obtaining goods by fraudulent pretences,) but an unnecessary summing up of the facts stated as overt acts. *Reg. v. King*, 1 D. & M. 741:

Cases cited in the judgment: *Rex v. Gill*, 2 B. & Ald. 204; *Rex v. De Berenger*, 3 M. & S. 87.

2. *Venue.*—A count in an indictment for a misdemeanor, with a statement of venue in the margin, charging, without any other statement of place, that the defendants, together with divers evil disposed persons, unlawfully endeavoured to excite her Majesty's subjects to disaffection, &c.: *Held*, bad, in arrest of judgment, for want of statement of venue in the body of the indictment, the defect not being cured by 7 Geo. 4, c. 64, s. 20.

Another count, with a statement of venue in the margin, stated that certain persons (without any statement of place) unlawfully and tumultuously assembled, &c.; and that the defendants (with a statement of place) did unlawfully aid, abet, comfort, support, and encourage the said persons to continue such unlawful assemblies.

*Semble*, that such count would have been bad at common law for want of statement of venue; but *held*, in this instance, to be the "want of a proper or perfect venue," and therefore cured by 7 G. 4, c. 64, s. 20. *Reg. v. O'Connor*, 1 D. & M. 761.

Cases cited in the judgment: *Reg. v. Rhodes*, 2 Lord Ryam. 886; *Lenthall's Case*, Cro. Eliz. 137; *Rex v. Burridge*, 3 P. Wms. 439, 496; *Rex v. Fossett*, ib. 497; *Rex v. Fraser*, 3 Bann's Jan. 463, S. C. 1 Moody's Cr. Ca. 407; *Scott's Case*, 2 East's P. C. 754, 758, 760.

#### INSOLVENT.

See *Replication*, 1.

## JOINDER OF PARTIES.

See *Covenant*, 2.

## LIBEL.

*Pleading under the 6 & 7 Vict. c. 96.*—In an action against the proprietor of a newspaper for libel, the defendant cannot plead not guilty, together with a plea of apology and payment of money into court, under the 6 & 7 Vict., c. 96, s. 2. *O'Brien v. Clement*, 32 L. O. 135.

## LIBERUM TENEMENTUM.

See *Trespass*, 2.

## LIMITATIONS, STATUTE OF.

*Breach of covenant.*—To debt on bond, the defendant, after craving oyer of the condition, (which was for the performance of the covenants of an indenture,) pleaded that no cause of action, by reason of any breach of the condition of the bond, or of the covenants of the indenture, accrued at any time within 20 years next before the commencement of the suit: *Held*, bad, on special demurrer.

*Semble*, that the plea should have set out the indenture, and averred performance of all the covenants which were performed within 20 years, and admitted breaches of all those covenants which had been broken within that time, and, as to those breaches, have pleaded the Statute of Limitations. *Sanders v. Coward*, 3 D. & L. 281.

## MUTUAL PROMISES.

*Award.*—A declaration in debt by the assignee of an insolvent debtor stated, that the plaintiff had brought an action against the defendant to recover a debt due to the insolvent; that after issue joined, the cause was referred to arbitration by order of *nisi prius*. The declaration then alleged mutual promises to abide by, perform, and fulfil the award; and that the arbitrator awarded that the plaintiff was entitled to recover a certain sum: breach, non-payment. *Held*, on special demurrer, that the allegation of mutual promises rendered the declaration bad. *Held*, also, that it need not appear by the declaration that the submission to arbitration was with the consent of the major part of the creditors of the insolvent; and *semble*, that the absence of such consent would not vitiate the award. *Sutcliffe v. Brooke*, 3 D. & L. 302.

## NEW ASSIGNMENT.

See *Sheriff*.

## NON OBSTANTE VEREDICTO.

See *Bill of Exchange*, 2.

## NON-REPAIR.

See *Covenant*, 1.

## NOTICE OF ACTION.

Where an act provided that a plaintiff should not recover for anything done in pursuance of the act, unless 21 days' notice of action were given: *Held*, that the defendant must plead the want of notice. *Davey v. Warne*, 14 M. & W. 199.

## PAYMENT.

*Damages.*—In an action of debt, the form of plea of payment of money into court given by the rule of Trinity Term, 1 Vict. is insufficient; it should be so framed as to include a payment into court, on account of the damages as well as the debt. *Lowe v. Steel*, 32 L. O. 375.

And see *Replication*, 2.

## PROMISSORY NOTE.

*Repayment of advances.*—*Misdirection.*—To an action by the indorsee against the maker of a promissory note, the defendant pleaded, that he made the note and indorsed it to the London and Westminster Bank, as a collateral security for certain advances made or to be made to the Marylebone Bank, upon the terms, that if those advances should be repaid before the note became due, the defendant should not be called upon to pay it. The plea then averred, that the advances so made were repaid before the note became due; that he had no value for his indorsement; and that the note was indorsed to the plaintiff after it became due. *Repliation, de injuriis: Held*, that it was an essential allegation, without which the plea must fail, that the advances were repaid before the note became due: and therefore, that it was a misdirection, for the judge, on the trial of the issue, to tell the jury, that if the note was given as a part security for the advances so made to the Marylebone Bank, the defendant was entitled to a verdict. *Richards v. Macey*, 14 M. & W. 484.

And see *Duplicity*, 1.

## REPLEVIN.

*Nul tiel record.*—*Surplusage.*—To debt on a replevin bond, setting out the record in the former action, the defendant pleaded *nul tiel record*, with a conclusion to the country: *Held*, that the plaintiff was not bound to demur, but might treat the conclusion as surplusage, and reply, taking issue on the plea of *nul tiel record* in the ordinary form. *Townsend v. Smith*, 3 D. & L. 323.

## REPLICATION.

1. *Insolvent.*—*Provisional assignee.*—*Dismissal of petition.*—To an action for goods sold, the defendant pleaded, that before commencement of the suit, the plaintiff petitioned the court for the relief of insolvent debtors, and that an order was made vesting his estate and effects in the provisional assignee of that court. The plaintiff replied, that the petition was dismissed, and the plaintiff discharged from custody, without taking the benefit of the act: *Held*, on special demurrer, that the replication was bad, for not alleging that the petition was dismissed before the commencement of the suit. *Yorston v. Fisher*, 3 D. & L. 297.

2. *Issue on payment.*—Debt on bond conditioned for the payment of a sum of money and interest on a given day, and for the performance of covenants in an indenture. Plea, performance generally. *Replication*, that the obligors did not pay the money in the con-

dition mentioned, *modo et forma*, concluding to the country: *Held*, that the replication was proper, as taking issue on the payment impliedly alleged in the plea. *Held*, also, that the plea was bad. *Roakes v. Manser*, 1 C. B. 531.

Cases cited in the judgment: *Bush v. Leake*, 3 Doug. 255; *Darbishire v. Butler*, 5 J. B. Moo. 198; *Smith v. Bond*, 10 Bing. 125; 3 M. & Scott, 528; *Turner v. M'Namara*, 2 Chitt. Rep. 697.

3. *Amendment*.—Where a year has elapsed from the time of giving judgment for the defendant on a demurrer to the plaintiff's replication, the court will not allow an amendment of the replication, nor the insertion of an additional count in the declaration, the time within which the latter must be done being two terms after service of the declaration. *Hammond v. Colls*, 32 L. O. 398.

#### SEVERAL ISSUES.

*Arbitrator's certificate*.—*Assumpsit*. The declaration contained counts for goods sold and delivered, for money had and received, and for money due on an account stated. The defendant pleaded, 1st, Except, &c., *non-assumpsit*; 2ndly, As to the sum excepted, tender; 3rdly, Except, &c., set-off; 4thly, Except, &c., payment. On these pleas issue was joined. At the trial, a verdict was taken by consent for the plaintiff, subject to the certificate of an arbitrator, who made his certificate in the following terms:—"As to the issue *firstly*, thirdly, and lastly, joined between the parties in the said cause, I do find and certify that the verdict so found as aforesaid ought to stand, and that the same shall and do stand upon and so far as relates to the first, third, and last issues." *Held*, on motion to set aside the above certificate, that the "issue *firstly* joined" meant the issue of *non-assumpsit* to the whole declaration; and that it was not necessary to find separately on the issue of *non-assumpsit* as to each count. *Adam v. Rowe*, 3 D. & L. 331.

Cases cited: *Kilburn v. Kilburn*, 2 D. & L. 633, S. C. 13 M. & W. 671; *Morgan v. Thomas*, 9 Jurist, 92.

#### SHERIFF.

*Sale under several writs of fi. fa.*—*New Assignment*.—Trove against sheriff for goods particularly described in the declaration. Plea, that defendant seized and sold the goods under a *fi. fa.*, at the suit of J. Replication, that the conversion complained of in the declaration is not the seizing and taking of the goods in the plea mentioned under the said writ, and that plaintiffs sue, not in respect of such seizing and taking, nor of goods seized, taken, and sold under the said writ, but for that plaintiffs were lawfully possessed of the goods in the declaration mentioned, which were other than and different from the goods seized, &c., by defendants under J.'s writ, and that defendants converted and disposed of the said goods in the declaration mentioned, &c.

—Plea, not guilty.

It was proved that the sheriff received J.'s writ, and seized under it goods of the debtor, including those claimed in the action of trover; he then received a writ at the suit of C., which afterwards proved invalid. After receiving the second writ he sold the goods on two successive days. The first day's sale produced enough to satisfy J.'s writ: the action of trover was brought by the assignees of the debtor (who had become bankrupt) for the goods sold after J.'s execution was satisfied. *Held*, that the sale was not to be considered entire and indivisible; but that the sheriff, after selling enough to satisfy the first writ, was liable in trover for the goods sold beyond that amount.

And that plaintiffs were right in new assigning, and ought not to have pleaded a mere traverse of the allegation that the goods were sold under J.'s writ.

A sheriff, after selling enough to satisfy an execution, is not justified in selling more on the supposition that, by accident for which he is not answerable, the amount levied may be insufficient. *Aldred v. Constable*, 6 Q. B. 370.

Cases cited in the judgment: *Stead v. Gascoigne*, 8 Taunt. 527; *Batchelor v. Vyse*, 4 M. & Scott, 552.

#### SURPLUSAGE.

See *Replevin*.

#### TENDER.

A declaration for use and occupation consisted of several counts for rent, work done, money paid, money lent, and an account stated, and the same sum was claimed in each count. The defendant pleaded, except as to 7l. parcel of the monies in the declaration mentioned, *non assumpsit*; and as to the sum of 7l. parcel, &c., a tender of that sum. The evidence was, that the sum of 7l. was all that was due, and that it was tendered in respect of the rent claimed in the first count of the declaration.

*Held*, that on these pleadings the defendant was entitled to a verdict, and that the form of the plea being "parcel of the monies in the declaration mentioned" did not constitute an admission of the defendant's liability on each count of the declaration so as to preclude him from proving the plea by showing that the tender was made in respect of the sum claimed in the first count. *Robinson v. Ward*, 32 L. O. 373.

#### TRAVERSE.

See *Distress*, 1.

#### TRESPASS.

1. *Sale of cattle*.—The statute 5 & 6 W. 4, c. 59, s. 4, provides, that a person impounding cattle must provide them with food, and after the expiration of seven days, he shall be at liberty to sell any such horse, ass, &c., to reimburse himself for the keep and expenses, rendering the overplus, if any, to the owner of such horse, &c. To an action of trespass for taking seven horses and selling two, the defendant pleaded that the horses were trespass-



ing, &c., and that he sold two of them to reimburse himself for the expense of the keep of all.

**Held**, after verdict for the defendant, that the plea was bad for not alleging that it became necessary to sell two of the horses in order to defray the expenses incurred, and a rule was made absolute for judgment *non obstante veredicto*. 39 L. O. 420.

2. *Laberum tenementum*.—The declaration stated, that the defendants, with force and arms, broke and entered a certain messuage, cottage, and dwelling-house, situate in Nova Scotia Gardens, in the parish of St. Martin, Bethnal Green, and then expelled the plaintiff from the possession and occupation of the same. Plea, that the messuage, cottage, &c., were the soil and freehold of the defendants, wherefore they committed the said trespass in the said messuage, &c., as they lawfully might for the cause aforesaid: **Held**, 1st, that the plea of *lib. ten.* was a good plea to this declaration, although the close was particularly described in the declaration; 2ndly, that it was not to be inferred from the declaration that there was any breach of the peace or forcible entry, the averment of *vi et armis* being a mere formal allegation that the defendants entered with some force sufficient to enable them to get into possession. *Harvey v. Brydges*, 14 M. & W. 437.

Cases cited in the judgment: *Croker v. Crompton*, 1 B. & C. 487; 3 D. & R. 719; *Newton v. Harland*, 1 M. & G. 644; 1 Scott, N. R. 3, 424, 503; *Lowe v. King*, 1 Saund. 81; *Rex v. Wilson*, 9 T. R. 357.

#### VENUE.

See *Indictment*, 2.

#### WRIT OF RIGHT.

**Death of sole tenant.**—*Journeys account*.—*Several matters*.—The issuing of a writ of right by journeys-account after the 31st December, 1834, is not warranted by an original writ of right pending on that day, which has since abated by the death of the tenant.

But all proceedings appearing fully upon the count on the second writ, the court refused to set aside the writ of *grand cape* and subsequent proceedings, leaving the tenant to raise the question by demurrer.

**Querre**, whether a writ by journeys-accounts lay where the former writ had abated by the death of a sole tenant. The tenant cannot, with the general *mise*, plead other pleas raising questions of fact for trial by an ordinary jury. *Davies v. Lowndes*, 7 M. & G. 762.

Here we conclude the Series of Digests for the present volume. The Index and Table of Contents will supply an easy reference to each section of the whole series, and a List of the Cases will be added.

It may be convenient in this place to refer to the previous parts of the Common Law Digest.

They will be found as follow:—

Railway Cases, p. 510.

Construction of Statutes, 535.

Principles of the Common Law and Grounds of Action, 556.

Common Law Practice, 583.

Common Law Pleadings, 606.

### RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

Queen's Bench.

(Before the Four Judges.)

Sittings in Banc after Easter Term, 1846.

*Doe dem. Merigon and Daley v. Daley*.

#### EJECTMENT.—CONSENT RULE.

*In an action of ejectment on the separate demises of A. and B. against C. the wife of B., the defendant cannot at the trial, after having entered into the consent rule, take objection that the lessor of the plaintiff is her husband.*

An action of ejectment was brought on the separate demises of Merigon and Daley against Rosina Daley. At the trial before Mr. Justice Wightman, at the Westminster sittings after Hilary Term, it appeared that the defendant was the wife of one of the lessors of the plaintiff, and it was thereupon objected that the defendant was entitled to a verdict on the demise by Daley, upon the ground that the husband cannot maintain an action against his wife. The learned judge overruled the objection, and a verdict was given for the plaintiff on the demise by Daley, with leave reserved to move to enter a verdict for the defendant.

A rule nisi having been obtained,

Mr. Petersdorff showed cause, and contended that the defendant was precluded from taking the objection of the coverture after having entered into the consent rule and consented to plead not guilty. The issue to be tried is whether the action can be maintained. John Doe is the plaintiff in the action in point of law. The court will not allow several lessors of the plaintiff, though separately interested, to appear by separate counsel; *Doe v. Bramley*.<sup>a</sup> He also cited *Philippe v. Bery*,<sup>b</sup> *Morgan v. Thomas*,<sup>c</sup> *Harrison v. Almond*.<sup>d</sup>

Mr. Bramwell, contra. The intervention of John Doe is a mere fiction, and should not be allowed to work an injury to the defendant by depriving her of the general rule of law that the husband and wife are one person. The defendant should be in the same situation as to real property as he is as to chattels taken and

<sup>a</sup> 6 Dowl. & Ryd. 292.

<sup>b</sup> Carth. 180.

<sup>c</sup> 2 Crompt. & Mee. 388.

<sup>d</sup> 4 Dowl. P. C. 321.

kept by his wife: a husband cannot bring trover against his wife. He cited *Rex v. Smyth*,<sup>\*</sup> *Wright v. Beard*,<sup>†</sup> *Doe v. Jackson*.<sup>‡</sup>

*Cur. adv. vult.*

Lord Denman, C. J., now delivered the judgment of the court, and after stating the facts of the case, said:—We do not see how this defendant is able to avoid the effect of the consent rule, which puts in issue nothing but her title. It is said the wife cannot be guilty of a trespass upon the property of her husband. We cannot accede to this doctrine as applicable to an ejectment, for the relation of husband and wife does not justify her in taking forcible possession of his property. There are technical difficulties in an adverse proceeding between married persons which are raised for the purpose of defeating justice by restoring to the owner land unlawfully withheld from him. This difficulty is met by a technical answer, for John Doe, claiming under a demise from the husband, and not the husband himself, is the plaintiff on the record.

Rule discharged.

Exchequer.

*Waller v. Blacklock*. May 22, & June 3, 1846.

**COSTS.—REMANET.—AMENDED PLEA.**

*A cause in which four issues were joined was set down for trial at the assizes, but made a remanet. Before the next assizes, the defendant amended one of the pleas, which covered the whole cause of action, and upon which a verdict was afterwards found for the defendant and for the plaintiff on the other issues. Held, that the plaintiff was entitled to the costs of the remanet.*

THIS was an action of trespass for destroying a weir. The defendant pleaded four pleas, upon which issues were joined, and the cause was entered for trial at the York summer assizes, 1844, but made a remanet. Shortly before the next assizes, the defendant obtained a judge's order to amend one of the pleas on payment of the costs of the amendment. The plea having been amended accordingly, the cause was tried at the spring assizes, 1845, and a verdict found for the defendant on the amended plea, which covered the whole cause of action, and for the plaintiff on the other pleas. On taxation, the master allowed the defendant the general costs of the cause, but allowed the plaintiff those of the remanet. A rule nisi having been obtained to review the taxation,

Hoggins showed cause. If the case had been tried at the assizes, 1844, the plaintiff would have been entitled to the costs of all the issues. Then the substitution of a new issue cannot deprive him of the costs of the remanet. Suppose an action, with a plea of non-assumpsit only, which being set down for trial, was made a remanet, and before the next sittings, another plea was substituted, the plaintiff would be entitled to the costs of the aban-

don attempt to try, although the defendant succeeded on the new plea.

*Cowling*, contra. The plaintiff has been paid the costs occasioned by the amendment, and if he sought for any further costs, he should have asked the judge to make their payment a part of the terms of the amendment.

*Cur. adv. vult.*

The judgment of the court was delivered by Parke, B. The question in this case was, whether Master Walker did right in allowing the plaintiff the costs of a remanet. There were four pleas on the record when the parties went down to the first assizes, and the cause was then made a remanet. Afterwards the defendant applied for leave to substitute another plea, which was allowed. The cause went down to the subsequent assizes, when a verdict was given for the plaintiff on the issues raised by the pleas which were on the record at the first assizes, but he failed on that raised by the added plea. On taxation, Master Walker having allowed the plaintiff the costs of the remanet from the first assizes, an application was made to us to review his taxation. We think Master Walker was right, although we have had some doubt about the point. We think he was right on this principle—the plaintiff would have succeeded on all the issues which were on the record at the first assizes—he underwent the delay of those assizes, and as part of the costs of those issues, he ought to have the costs of the delay, and consequently of the remanet. This rule must, therefore, be discharged.

Rule discharged.

## COMMON LAW SITTINGS.

### Exchequer of Pleas.

Michaelmas Term, 1846.

Monday	Nov. 2	{ Banc, Peremptory Paper after Motions.
Tuesday	3	{ Ditto, before Motions.— Nisi Prius, Middlesex 1st Sitting.
Wednesday	4	{ Ditto.
Thursday	5	{ Ditto.
Friday	6	{ Banc, Peremptory Paper.— Nisi Prius, London 1st Sitting.
Saturday	7	{ Ditto.
Monday	9	{ Banc, Special Paper.—Lord Mayor sworn.
Tuesday	10	{ Banc, Errors.—Nisi Prius, Middlesex 2nd Sitting.
Wednesday	11	{ Banc, Special Paper.
Thursday	12	{ Banc, Sheriffs nominated.
Friday	13	{ Ditto.—Special Paper.
Saturday	14	{ Banc, Crown Cases.
Monday	16	{ Banc, Special Paper.
Tuesday	17	{ Ditto.—Nisi Prius, London 2nd Sitting.
Wednesday	18	{ Banc, Special Paper.—Nisi Prius, by adjournment.

<sup>\*</sup> 1 Mead. & Rob. 155.

<sup>†</sup> 13 East 210.

<sup>‡</sup> 1 B & C. 448.

Thursday	19	{ Banc, Special Paper.—Nisi Prius, Middlesex 3rd Sitting.
Friday	20	Ditto.
Saturday	21	Ditto.
Monday	23	Ditto.
Tuesday	24	Ditto.
Wednesday	25	Ditto.

## EXCHEQUER CAUSE LISTS.

## PEREMPTORY PAPER.

*Michaelmas Term, 10th Vict. 1846.*

To be called on the first day of the Term, after the motions, and to be proceeded with the next day, if necessary, before the motions.

*Rule Nisi.*

4th June, 1846.—Smyth v. Wythe.

9th June, 1846.—Farina v. Horne.

12th June, 1846.—Waller v. Joy.

## SPECIAL PAPER.

*For Judgment.*

Duncan v. Benson, dem.

(Heard 2nd June, 1846.)

Ashley and others v. Pratt and others, special case.

(Heard 27th April, 1846.)

Moneypenny v. Dering, special case, by order of Vice-Chancellor Wigram.

(Heard 5th May, 1846.)

Pardoe, executor, &amp;c. v. Price, special case.

(Heard 27th May, 1846.)

Braham v. Wilkins, dem.

(Heard 1st June, 1846.)

Chantler and ux. v. Lindsey and ux., dem.

(Heard 8th June 1846.)

Nightingall v. Smith, special case, by order of Vice-Chancellor of England.

• (Heard 1st July, 1846.)

Pilkington and another v. Cooke, Esq., dem.

(Heard 3rd July, 1846.)

*For Argument.*

Griffiths v. Pyke, dem.

(To stand over until special case settled.)

Price and another, executors, &amp;c. v. Woodhouse and another, dem.

Robinson v. Purday, special case, by order of Vice-Chancellor Wigram.

James and another v. Crane and another, special case, by order of Nisi Prius.

Haigh and another v. Jaggard and another, dem.

Clements v. Flight, dem.

(Part heard 3rd July, 1846.)

Digby v. Rayne, special case, by order of Mr. Baron Alderson.

Brown v. Thurlow, dem.

(Part heard 3rd July, 1846.)

Plumer v. Constable, sued with another, dem.

Hall v. Lack, dem.

Anderson v. Hardinge, dem.

Flight v. Maclean, dem.

(Part heard 3rd July, 1846.)

Flight v. Maclean, dem.

(Part heard 3rd July, 1846.)

Chilton, jun. v. The London and Croydon Railway Company, dem.

Haigh and another v. Jaggard and others, dem.  
Ayers v. Sloper, clk., dem.  
Rawlins v. Ellis and others, special case, by order of Mr. Baron Alderson.  
Milford v. Hughes, dem.  
Wright v. Madocks and another, dem.  
Same v. Madocks, dem.  
Power v. Harding, dem.  
Woods v. Durant, dem.  
Muter v. Murray, dem.  
Spry v. Gollop, special case, by order of the late Lord Abinger.

Roslin v. Mugridge, dem.  
Brown P. O. v. Byers and others, special case, by order of Nisi Prius.

Price v. The Great Western Railway Company, special case, by order of Mr. Baron Alderson.

Phillips v. Lewis, dem.

Bousfield v. Wilson, dem.

O'Brien v. Clement, dem.

Harnett and ux. v. Maitland, dem.

## NEW TRIAL PAPER.

*For Judgment.**Moved Hilary Term, 1846.*

London, Lord Chief Baron.—Ackerman and others v. Ehrensperger.

(Heard 22nd May, 1846.)

*Moved Easter Term, 1846.*

Middlesex, Lord Chief Baron.—Daniels v. Fielding.

(Heard 23rd May, 1846.)

Chester, Mr. Justice Williams.—Kearaley v. Cole.

(Heard 26th June, 1846.)

Swansea, Mr. Justice Wightman.—Norris v. Barnes and others.

(Heard 1st July, 1846.)

*For Argument.**Moved Easter Term, 1846.*

Liverpool, Mr. Justice Coleridge.—Ormerod and others v. Chadwick and another, Esqrs., on affidavit.

Chester, Mr. Justice Williams.—Potts and others, assignees, &c. v. Clegg, executors; Chamberlain v. The Chester and Birkenhead Railway Company.

City of Chester, Recorder of Chester.—Seller and others v. Jones.

*Moved Trinity Term, 1846.*

London, Lord Chief Baron.—Woodcock, jun. v. Houldsworth.

## THE EDITOR'S LETTER BOX.

THE letter of "A Subscriber from the commencement" on delays in payment of the amount levied under an execution shall be inserted.

The Letter from Ely on the Rent Apportionment Act, shall be attended to.

The Quære of "Tacitum" shall be considered.

Our next number will contain the names of the original cases reported in this volume, with those comprised in the Analytical Digest. The Table of Titles, which will furnish an easy reference to all the sections of the Digest, will accompany the Title Page and Contents early next month. A General Index will close next week's number.

# The Legal Observer.

SATURDAY, OCTOBER 31, 1846.

—“Quod magis ad nos:  
Pertinet, et nescire malum est, agitamus.”

HOLAT.

## JURISDICTION OF THE NEW COUNTY COURTS.

IN resuming the consideration of the jurisdiction of the courts constituted under the statute 9 & 10 Vict. c. 95, we may at once observe, that although, as regards the cognizance of causes, the jurisdiction to be exercised by the new tribunals is, as already stated, in most cases concurrent with that exercised by the superior courts, the judges to be appointed under this act are invested with authority wholly dissimilar to, and far exceeding, that which the law allows to be exercised by the judges of the superior courts. In the new courts, for example, the judge who tries a cause has the sole power concentrated in him of granting or refusing a new trial, in any case, or under any circumstances; and, although a plaintiff should appear at the time appointed for trial, and earnestly desire that his case may be submitted to a jury, without asking his consent, the judge may direct a nonsuit to be entered; two provisions which, by their combined operation, manifestly render the presence of a jury in these courts an idle mockery, and give those antiquated persons who still respect the institution of trial by jury reason to wish, that the clause which enacts, “that the judge of the County Court shall be the sole judge in all actions brought in the said court, and shall determine *all questions as well of fact as of law*,” had stopped here, without the addition of the words, “unless a jury shall be summoned.” Whilst a judge, of his mere will, has power to nonsuit a plaintiff, and thereby withdraw

any question of fact from the determination of a jury, and the further power, if dissatisfied with a verdict, of trying the cause as often as he thinks proper, and until he finds a concurring jury, the formality of summoning five honest men from their homes may be advantageously dispensed with, and the suitor be as well content with an empty jury-box as if it contained the full complement of twelve good men and true.

As regards the payment of costs incurred in proceedings instituted in the New Courts, the discretion of the judge is substituted for the law. The 88th section provides, that all the costs “shall be paid by, or apportioned between, the parties in such manner as the judge shall think fit;” and in default of any special direction, they shall abide the event of the action, so that it is quite competent for the judge, if so disposed, to burthen the successful suitor with the whole or any part of the costs of an action. Connected with this subject is the novel and invidious authority conferred on the judge by the 91st section, which provides, that the expense of employing a barrister or attorney shall not be allowed in any case, “unless by order of the judge!” a provision, we admit, well calculated to test the independency of both branches of the profession, and which affords an opening to the suspicion *at least* of favouritism and abuse. After the examples we have cited of the nature and extent of the power with which the judges of the new courts are to be invested, it can excite no surprise to find a sweeping enactment, that in all cases not expressly provided for, “the general principles of practice in the superior courts of common law may be adopted and applied, at the discretion of the judges, to actions and

\* Sect. 89.

proceedings in their several courts;"<sup>b</sup> a power so vague and extensive as to admit of every possible diversity of practice, when exercised without the opportunity of appeal.

The clauses in the new act by which an inquisitorial power is confided to the judges of examining into the circumstances of judgment debtors, and the manner in which any debt or liability has been incurred, and of committing fraudulent or contumacious debtors to prison for a period not exceeding forty days, have been borrowed with so little variation from the stat. 8 & 9 Vict. c. 127, as to preclude the necessity for detailed consideration. In addition to the authority now exercised by the commissioners of the Court of Bankruptcy and others, under the act last referred to, the judges of the new courts are empowered,<sup>c</sup> at the hearing of the cause or any adjournment thereof, if judgment shall be given for the defendant, to examine the parties and commit in the same manner as if the judgment had been previously obtained and the defendant summoned. Whilst touching on this portion of the new act we may observe, that the provision at the conclusion of the 98th section, declaring that the costs of summoning the judgment debtor and of all the proceedings thereon shall be deemed costs in the cause, is a valuable amendment of the corresponding clauses of the stat. 8 & 9 Vict. c. 127, in which the subject of costs was altogether overlooked, and the commissioners, or other judges, left without any discretion in the matter.

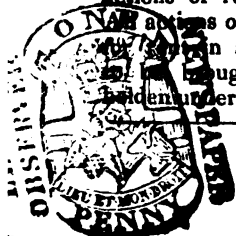
The provisions of the act 1 & 2 Vict. c. 74, to enable a landlord summarily to recover the possession of tenements from a tenant holding over after the determination of his tenancy, have been imported into the new act, with such alterations and additional machinery as were thought necessary to adapt them to the new tribunals, and with an extended application to premises of the rent or value of 50*l.* a year, whilst the 1 & 2 Vict. was confined to cases where the rent did not exceed 20*l.* a year.

The alterations created by the new act in the practice, as regards the removal of actions of replevin, are not unimportant. In the new act actions of replevin in cases of distress for rent in arrear or damage *faisant* are to be brought by plaint "in the court of the county in which the cause of action arose, or in the court for the district where-

in the distress was made;" but in case either party shall declare to the court that the title is in question, or that the rent or damage in respect of which the distress is taken, exceeds 20*l.*, and shall become bound with two sureties to prosecute the suit with effect and without delay, and to prove that the title is in dispute, or that there was ground for believing the rent or damage exceeded 20*l.*, then, but not otherwise, the action may be removed as before. It appears, therefore, that in addition to the replevin bond given to the sheriff under the stat. 11 Geo. 2, c. 19, a party desiring to remove a replevin suit to one of the superior courts must, in every instance, enter into the bond prescribed by the 121st section of the new act, before issuing the writ of *recordari facias loquelam*.

With respect to the local jurisdiction of the new courts, it is made to depend altogether upon the orders of her Majesty's Privy Council, who are empowered to divide the whole or part of any county into districts, and to order a court to be holden for each of such districts, altering the number of courts and the extent of the districts at pleasure, without any regard to existing local divisions. The provision specifying the district in which actions are to be commenced is marked by that obscurity which we have already had occasion to observe upon in other parts of the act. The 60th section enacts, that the summons, which is the primary process in a suit, "may issue in any district in which the defendant, or one of the defendants, shall dwell or carry on his business at the time of the action brought," which is sufficiently clear, but the clause proceeds:—"or by leave of the court for the district in which the defendant, or one of the defendants, shall have dwelt or carried on his business at some time within six calendar months next before the time of the action brought, or in which the cause of action arose, such summons may issue in either of such last-mentioned courts." We conjecture the intention was, that the suit may be commenced as of right, in the district in which the defendant, or one of several defendants, is residing or carrying on business; and that it may be commenced, not as of right, but by leave of the court, in the district in which the defendant, or one of the defendants, has dwelt or carried on business at any time within six months, or in the court of the district in which the cause of action arose. We are by no means certain, however,

<sup>b</sup> Sect. 78.



that this is the true construction of the clause, and are at a loss to suggest from which court leave should be obtained in either of the events last contemplated.

Any notice of the jurisdiction of the new County Courts would be incomplete if we omitted to observe, that by a proviso annexed to the 1st section, it is specifically declared, "that no court shall be established under this act in the city of London." Whether this exemption is to be regarded in the light of a privilege or a deprivation, we leave to be determined; but if the cheap law to be administered under this act is so great a boon as it has been represented, it seems marvellous that its benefits should be withheld from the inhabitants of the most important city in the empire, and one that numbers the premier amongst its representatives! The concise manner in which the city of London is disposed of, by the proviso above cited, is strongly contrasted, however, with the anxious solicitude which those who framed the act have displayed as respects the "liberty of Hallamshire," and the "hamlet or bierlow of Ecclesall," which constitute the exclusive subject of a somewhat lengthy clause. We learn from this clause, that "John Parker, Esq., has been appointed and is steward of the manor of Sheffield," and that "Daniel Maude, Esq., has been appointed and is steward of the manor of Ecclesall." The clause then proceeds to enact, that if the said John Parker shall continue steward of the manor of Sheffield when any order shall be made for holding a court under this act within the liberty of Hallamshire, a district shall be constituted which shall comprise at least the whole liberty of Hallamshire, except the hamlet or bierlow of Ecclesall; and if the said Daniel Maude shall continue steward of the manor of Ecclesall, another district shall be constituted under the act to comprise at least the whole hamlet or bierlow of Ecclesall, and that in such cases the said John Parker and Daniel Maude shall be entitled to be appointed the first judges of the courts to be holden in the said districts respectively; and further, that "the districts of the said two courts shall not be reduced within the said limit respectively, so long as the said John Parker and Daniel Maude respectively shall continue judges of the said courts." We congratulate Mr. Parker and Mr. Maude, who are both, we doubt not, gentlemen of great worth and respec-

tability, upon the distinction conferred upon, as well as the provision secured for, them, by being especially nominated as judges under the act, and sincerely hope that those favoured localities—the liberty of Hallamshire and the bierlow of Ecclesall—may continue for many years intact, in all their primitive integrity, without excision or extension, whilst every other part of the kingdom is parcelled and carved out by the ruthless orders of her Majesty's Privy Council.

We cannot dismiss this subject without directing attention to another clause of the act which does not fall strictly within the scope of an examination into the jurisdiction of the new courts, but is so important and unlooked for in its operation, that it appears to be extremely doubtful whether its sagacious contrivers could have anticipated its consequences. We allude to the 6th section, an attentive consideration of which has brought some discerning persons to conclude, that the execution of the act must be altogether suspended until this blunder has been rectified by parliament. Before adverting to the language of the section we may remind our readers, that in the session of 1844, the act 7 & 8 Vict. c. 96, passed, "to amend the law of insolvency, bankruptcy and execution," under which the commissioners of the Court of Bankruptcy have the power of granting protecting orders to insolvent petitioners, and which contained the famous clause abolishing arrest upon final process in actions for debt not exceeding 20*l*. It will also be remembered that the clause last referred to having produced its natural results, and afforded unprincipled knaves an opportunity of laughing at their unfortunate creditors, it was felt that the advocates for impunity to dishonest debtors had gone a little in advance of what is called "the spirit of the age," and much further than the trading community could endure. By way of set-off, therefore, and to allay the irritation created by the measure of 1844, an act passed in the session of 1845, (the act 8 & 9 Vict. c. 127, above referred to,) "for the better securing the payment of small debts," to which a measure for the establishment of local courts was, we had almost said, surreptitiously annexed, during the progress of the bill through parliament, although by reason of the stupidity of the framers, it has, fortunately for the community, proved abortive. Now the recent act 9 & 10 Vict. c. 95, s. 6, after specially re-

citing the 7 & 8 Vict. c. 96, and the 8 & 9 Vict. c. 127, proceeds to enact, that as soon as a court shall be established in any district under this act, the several provisions and enactments of the said acts 7 & 8 and 8 & 9 Vict. *and of every other act of parliament heretofore passed*, so far as the same respectively relate to or affect the jurisdiction and practice of the court so established, or give jurisdiction to any court, or to any commissioner of the Court of Bankruptcy, with respect to judgments or orders obtained in the court so established, *shall be repealed*. Supposing the new courts to be established throughout the kingdom, he is a bold man who can predicate, with any degree of confidence, to what extent the existing law will be altered or affected by the section just recited. Some of our correspondents suggest, that the effect will be to repeal the 57th section of the 7 & 8 Vict. c. 96, and thereby restore arrest on final process for debts not exceeding 20*l*. We do not conceive, however, that the repealing clause will have this effect, because the new act does not contemplate nor admit of arrest on final process on judgments obtained in the new County Courts. It is tolerably clear, however, that the section above referred to would deprive the commissioners of bankruptcy and insolvency of jurisdiction in cases where judgments were obtained in the new County Courts, and thus throw the law of bankruptcy and insolvency into inextricable confusion. It would also effect the jurisdiction of the superior courts in a variety of cases which will readily suggest themselves to every one acquainted with the practice of those courts. Fortunately, however, the section remains a dead letter until the new courts have been established, and the present Lord Chancellor's character, for caution and foresight, affords a sufficient guarantee that he will not inconsiderately assent to any proposal for hastily carrying into execution an act which contains this remarkable specimen of reckless legislation.

#### NEW STATUTES, EFFECTING ALTERATIONS IN THE LAW.

##### LUNATIC ASYLUMS.

9 & 10 VICT. c. 84.

An Act to amend the Law concerning Lunatic Asylums and the Care of Pauper Lunatics in England. [26th August, 1846.]

8 & 9 Vict. c. 126,—In what cases justices and

others are to issue orders for confinement of lunatics.—Whereas doubts have been entertained whether under the provisions of an act of the last session of parliament, intituled "An Act to amend the Laws for the Provision and Regulation of Lunatic Asylums for Counties and Boroughs, and for the Maintenance and Care of Pauper Lunatics, in England," it is incumbent on justices of the peace, and others therein specified, to issue orders for the reception into a lunatic asylum, or house licensed or hospital registered for the reception of lunatics, of all persons who shall be brought before them, or whom they shall visit in the manner prescribed by the said act, and of whose lunacy they shall be satisfied, or only of those persons of whose lunacy they shall be satisfied, and whom they shall deem proper persons to be confined, according to the tenor of the order set forth in the form numbered one in the schedule marked (E.) annexed to the said act: Be it declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall not be deemed incumbent on any justice of the peace, or upon any clergyman, overseer, or relieving officer, to sign or issue such order as aforesaid, in all cases in which the physician, surgeon, or apothecary whom he or they shall have called to his or their assistance shall have signed the certificate according to the form numbered one in the said schedule (E.) as provided by the said act; but that every justice, clergyman, overseer, or relieving officer by whom any such order shall be signed or issued, in the case of every such person of whose lunacy he shall be satisfied, shall be bound, before signing the order, to satisfy himself of the propriety of confining such lunatic in a lunatic asylum, unless a medical certificate that such lunatic is a proper person to be so confined, in the same form as the medical certificate in the said schedule (E.) number one, shall have been signed by the medical officer of the union or parish to which the lunatic belongs, as well as by the said physician, surgeon, or apothecary, in which case such two medical certificates shall be received by every such justice, clergyman, overseer, and relieving officer as conclusive evidence that such lunatic is a proper person to be so confined.

2. *Committees of justices appointed, or who may hereafter be appointed, for providing lunatic asylums, deemed to have been legally appointed*.—And whereas by the said act it is enacted, that a committee of justices to superintend or to treat and enter into an agreement for the erecting or providing an asylum for the pauper lunatics of any county or borough which has no asylum for the pauper lunatics thereof shall be appointed at the time and in the manner prescribed by the said act, after public notice of the intention to appoint such committee given on or before the general or quarter sessions for such county or borough next after

the twentieth day of December, one thousand eight hundred and forty-five; but the objects of the act have not been in all cases fully attained, and doubts have been entertained as to the power of the justices in the appointment of such committees, and as to the powers of such committees when appointed; be it declared and enacted, That a committee as aforesaid may and shall be appointed in every county and borough which has no asylum for the pauper lunatics thereof, and in which a committee has not been already appointed, or in which a committee once appointed has ceased or shall hereafter cease to exist without carrying into effect the purposes for which it was appointed, or, if appointed for the purpose only of treating and entering into an agreement, has reported or shall hereafter report that it is not practicable or expedient to enter into an agreement, or to that effect; and that notwithstanding any committee already appointed or hereafter to be appointed may have been appointed either for the purpose only of superintending the erecting or providing an asylum, or for the purpose only of treating and entering into an agreement for erecting or providing an asylum, or for effecting the one or the other of the said purposes, as to the said committee may seem best, such committee shall be deemed to have been legally appointed under the said act, and duly empowered to carry into effect the purpose for which it has been or may be so appointed; and in any case in which the occasion for the appointment of a committee for any of the purposes aforesaid now exists or shall hereafter arise, public notice of the intention to appoint the same shall be given in the manner prescribed by the said act, on or before the general quarter session of the peace to be holden for such county or borough next after the passing of this act, or next after the occasion for the appointment thereof shall have arisen, as the case may be: Provided nevertheless, that notice at any subsequent general quarter session of the peace for such county or borough of the intention to appoint any such committee, and the appointment of a committee in pursuance thereof, shall be valid.

3. *Powers of committees may be enlarged by justices.*—And be it enacted, That when any committee hath been or shall hereafter be appointed for one of the aforesaid purposes only, it shall be lawful for the justices, if they shall think fit, at any general quarter session of the peace after the like public notice as is required in the case of the first appointment of the committee, to enlarge the powers of the committee, so as to authorize the committee to effect the one or the other of such purposes, as to the said committee may seem best, and, if necessary, under the provisions of the said act, to appoint additional members of the said committee; and every such committee shall be deemed to have been legally appointed under the said act, and duly authorized to carry into effect the one or the other of the said purposes, as to the said committee may seem best.

4. *Until committees of visitors shall be ap-*

*pointed for any county, &c., the committee appointed for providing an asylum shall act as such.*—And be it enacted, That until a committee of visitors shall, under the provisions of the said act or of this act, be appointed on behalf of any county or borough, counties or boroughs, the committee appointed or hereafter to be appointed, either for superintending the erecting or providing, or for treating and entering into an agreement for erecting or providing an asylum, or for effecting the one or the other of those purposes, as to the said committee may seem best, shall have, on behalf of the county or borough by which such committee shall have been appointed, all the powers, as well of contracting with the proprietors of any house licensed for the reception of lunatics, as otherwise, of a committee of visitors appointed under the said act, save that a committee for the purpose only of treating and entering into an agreement as aforesaid shall not have power to take measures towards erecting or providing a lunatic asylum for the sole use of the county or borough for which it shall have been appointed.

5. *Committee of visitors to be appointed by justices and subscribers to lunatic asylums.*—And be it enacted, That whenever any agreement shall have been entered into, signed, and reported, as in the said act is mentioned, the justices of every county to which such agreement shall relate, assembled at the general or quarter sessions to which such report shall be made, and the justices of every borough to which such agreement shall relate, shall, at a special meeting to be held within twenty days after such agreement shall have been reported as aforesaid, and the subscribers of every lunatic asylum to which such agreement shall relate, or the majority of such subscribers, present at a meeting to be holden within twenty-eight days after the signing of such agreement, and of which notice shall have been given by public advertisement in some newspaper circulated within the place in which such lunatic asylum shall be situated, shall appoint a committee of visitors, in the same manner and under the regulations and with the powers mentioned in the said act in respect of a committee of visitors appointed for the like purpose at the times mentioned in the said act, and all the provisions in the said act relating to committees of visitors shall apply to the said committee, as far as the same may be applicable.

6. *Further provision for the temporary care of pauper lunatics.*—And whereas certain powers are given by the said act to every committee of visitors to contract for certain purposes, for a limited time and under certain restrictions, with the proprietors of any house licensed for the reception of lunatics: And whereas it is expedient to enable further provision to be made for the temporary care of pauper lunatics; be it enacted, That it shall be lawful for any committee of visitors to make provision, either in manner mentioned in the said act or otherwise, for the temporary care of lunatics, subject to the approval, restrictions



limitations and provisos mentioned in the said act with respect to such contracts as aforesaid, in as far as such limitations and restrictions and provisos are applicable to any provision other than a contract with the proprietor of a house licensed as aforesaid, and the expenses of making such provision shall be paid out of the same monies or funds and in the same manner as is provided in the said act in the case of contracts with such proprietors as aforesaid; and it shall be lawful for the guardians and overseers of any union or parish, with the consent of the Poor Law Commissioners for England and Wales, to contract with any such committee of visitors for the use and occupation of all or any part of a workhouse as a temporary asylum for pauper lunatics; and during such temporary occupation such workhouse, or the part of it so occupied, shall be subject to the same law as a workhouse taken for the reception of pauper chronic lunatics under the provisions of the said act.

7. *Separate committees to be appointed for every such asylum.*—Justices may appoint the same committee for two asylums.—And whereas by the said act provision is made that in certain cases therein specified more than one asylum shall be erected or provided in a county or borough, and it hath been doubted whether a separate committee of justices should be appointed in reference to every such asylum; be it declared and enacted, That the true intent and meaning of the said act is, that a separate committee of justices be appointed in every such county or borough for every such asylum, each of which committees shall have all the powers and be subject to all the provisions of the said act with regard to the asylum for which it is appointed, as if it were the only asylum for that county or borough: Provided always, that it shall be lawful for the justices of the county or borough, if they shall think fit, with the approval of one of her Majesty's principal Secretaries of State, to appoint the same committee for two or more such asylums.

8. *For recovering money under orders made by justices under provisions of 9 G. 4, c. 40.*—And be it enacted, That all the powers and remedies given by the said act of the last session of parliament, and the provisions therein contained for recovering money ordered by justices of the peace, under the provisions of the same act, to be paid by the overseers of any parish, shall extend to the recovery of any money which may have been ordered by any justices of the peace under the provisions of an act passed in the ninth year of the reign of his late Majesty King George the Fourth, intitled "An Act to amend the Laws for the Erection and Regulation of County Lunatic Asylums, and more effectually to provide for the Care and Maintenance of Pauper and Criminal Lunatics, in England," to be paid by the overseers of any parish, and which at the time of the passing of this act may be due, or may thereafter become due by virtue of any such order.

9. *Extending powers of borrowing money.*—

And be it enacted, That the powers given by the said act to the justices of every such county and to the council of every such borough to borrow money toward defraying the expenses of carrying into effect the purposes of the said act, or of any act thereby repealed, whenever it should appear, as therein provided, that such expenses would exceed the several sums of 5,000*l.* or 2,000*l.* in the several cases therein specified, shall be extended to all cases in which it shall appear to the said justices or council respectively expedient to borrow money toward defraying such expenses, whether or not it shall appear that such expenses will exceed the sum of 5,000*l.* or 2,000*l.*, as the case may be; and such money may be raised in any sum or sums at any rate of interest not exceeding the yearly rate of 5*l.* in the 100*l.*

10. *Construction of Terms.*—And be it enacted, That the words "furnishing and completing" the asylum, in the said act, shall be held to include the purchase of clothing sufficient for opening the said asylum for the reception of patients.

11. *Act to be construed with 8 & 9 Vict. c. 126.*—And be it enacted, That this act shall be construed with and as part of the said act of the last session of parliament.

12. *Act may be amended, &c.*—And be it enacted, That this act may be amended or repealed by any act to be passed in this session of parliament.

## INTERNATIONAL COPYRIGHT.

### ORDERS IN COUNCIL, — TREATY WITH SAXONY,

At the Court at Windsor, the 26th day of September, 1846;

Present—The Queen's most excellent Majesty in council.

Whereas a treaty has been concluded between her Majesty and his Majesty the King of Saxony, whereby due protection has been secured within the Saxon dominions for the authors of books, dramatic works, or musical compositions, and the inventors, designers, or engravers of prints, and articles of sculpture, and the authors, inventors, and designers, or engravers of any other works whatsoever of literature and the fine arts, in which the laws of Great Britain and Saxony do now or may hereafter give their respective subjects the privilege of copyright, and for the lawful representatives or assigns of such authors, inventors, designers, or engravers, with regard to any such works first published within the dominions of her Majesty.

Now, therefore, her Majesty, by and with the advice and consent of her privy council, and by virtue of the authority committed to her by an act passed in the session of parliament held in the 7th and 8th years of her reign, entitled "An Act to amend the Law relating to International Copyright," doth order, and it is hereby ordered, that from and after the day of the date hereof, the authors, inventors, designers, en-

gravers, and makers of any of the following works—that is to say, books, prints, articles of sculpture, dramatic works, musical compositions, and any other works of literature and the fine arts, in which the laws of Great Britain give to British subjects, the privilege of copyright, and the executors, administrators, and assigns of such authors, inventors, designers, engravers, and makers, respectively, shall, as respects works first published within the dominions of Saxony, after the 1st day of September, 1846, have the privilege of copyright therein for a period equal to the term of copyright which authors, inventors, designers, engravers, and makers of the like works, respectively, first published in the United Kingdom are by law entitled to; provided such books, dramatic pieces, musical compositions, prints, articles of sculpture, or other works of art, have been registered, and copies thereof have been delivered according to the requirements of the said recited act, within twelve months after the first publication thereof, in any part of the Saxon dominions.

And it is hereby further ordered, that the authors of dramatic pieces and musical compositions which shall, after the 1st day of September, 1846, have been or be first publicly represented or performed within the dominions of Saxony, shall have the sole liberty of representing or performing in any part of the British dominions such dramatic pieces or musical compositions, during a period equal to the period during which authors of dramatic pieces and musical compositions first publicly represented or performed in the United Kingdom are entitled by law to the sole liberty of representing or performing the same; provided such dramatic pieces or musical compositions have been registered, and copies thereof have been delivered according to the requirements of the said recited act, within 12 calendar months after the time of their being first represented or performed in any part of the Saxon dominions.

WM. L. BATHURST.

At the Court at Windsor, the 26th day of September, 1846;

Present—The Queen's most excellent Majesty in council.

Whereas by an act passed in the session of parliament held in the 9th and 10th years of the reign of her present Majesty, intituled "An Act to amend an Act of the 7th and 8th years of her present Majesty, for reducing under certain circumstances, the duties payable upon books and engravings," it is enacted, that whenever her Majesty has, by virtue of any authority vested in her for that purpose, declared that the authors, inventors, designers, engravers, or makers of any books, prints, or other works of art, first published in any foreign country or countries, shall have the privilege of copyright therein, it shall be lawful for her Majesty, if she think fit, from time to time, by any order in council, to declare, that from and after a day to be named in such order, in lieu of the duties of customs from

time to time payable on the importation into the United Kingdom of books, prints, and drawings, there shall be payable only such duties of customs as are mentioned in the said act.

And whereas her Majesty hath this day, by virtue of the authority vested in her for that purpose, declared that the authors, inventors, designers, engravers, and makers of books, prints, and certain other works of art, first published within the dominion of Saxony, shall have the privilege of copyright therein.

Now, therefore, her Majesty, by and with the advice and consent of her Privy Council, and in virtue of the authority committed to her by the said recited act, doth order, and it is hereby ordered, that from and after the 1st day of October, 1846, in lieu of the duties of customs now payable upon books, prints, and drawings, published at any place within the dominions of Saxony, there shall be payable only the duties of customs following (that is to say)—

On books originally produced in the United Kingdom, and republished at any place within the dominions of Saxony, a duty of 2*l.* 10*s.* per cwt.

On books published or republished at any place within the dominions of Saxony, and not being books originally produced in the United Kingdom, a duty of 1*s.* per cwt.

On prints and drawings, plain or coloured, published at any place within the dominions of Saxony,

Single, each . . . . . *½d.*  
Bound or sewn, the dozen . . . 1*½d.*

W. L. BATHURST.

## DELAYS IN PAYMENT OF LEVY ON EXECUTION.

To the Editor of the Legal Observer.

SIR,—Having occasion to sue on a bill of exchange, the defendant gave a judge's order for payment of debt and costs, on the 16th July last. When that time arrived, at the solicitation of his attorney, I refrained from entering up judgment immediately; but on the 26th August, in consequence of peremptory directions from my client, I signed the judgment, and issued a *ca. sa.* It turned out that the defendant was then in custody at another suit. The officer to whom the sheriff gave my writ, returned, that he had arrested the defendant, and had him in custody. About 10 days afterwards the debt and costs were paid. This I learned from my clerk, who met the defendant, and from him received the information. I applied to the officer who was entrusted with my execution, and he referred me to the officer who made the first arrest. It appears to be the custom to allow such officer to receive the debt and costs in *all* the actions. On going to his place of business, his clerk or assistant made some excuse for non-payment before, and said his principal was not in the way. On applying a second time, he said his employer was

gone into the city, and would no doubt call. A third visit brought the same reply. Tired with conduct like this,—the object of which was too clear,—I took out a judge's order for the return of the writ. The return was, (I omit the names of the plaintiff and defendant, and of the sheriff, but you are perfectly welcome to them, and to my own too, if they be of any service :) "By virtue of the writ I took the within named and him safely kept until the within named discharged me from further keeping of him, whereupon I permitted him to go at large, therefore, I cannot have his body before the Queen at Westminster, as I am within commanded. The answer of sheriff." The money is yet unpaid.

It may be said, why did I not apply directly to the sheriff? I will just add, that the solicitor concerned in the action, on account of which the first capture was made, wrote a full statement to that functionary, and did not even get a reply.

Of course, many remarks could be made. I content myself with saying, that the delay has injured my client, who has been obliged to renew some bills at a heavy discount, and with asking how long such a state of things is to continue? I suppose the money will be forthcoming time enough to prevent the sheriff being subjected to costs.

Your work is so strenuous in its efforts to effect proper reforms, that I make no apology for bringing this matter before you.

A SUBSCRIBER FROM THE COMMENCEMENT OF YOUR JOURNAL.

## OPERATION OF THE POOR REMOVAL ACT.

We printed the Poor Removal Act, 9 & 10 Vict. c. 66, in our Number for 26th Sept.\* The Poor Law Commissioners recently issued a circular to the Board of Guardians, from which it will be useful to make the following extracts, showing the views of the commissioners in carrying the act into effect:—

The first four clauses prohibit the removal of paupers from the place of their residence under certain circumstances.

The first clause prevents the removal of any person from the parish in which such person has resided for the space of five years next before the application for the warrant of removal.

But in the computation of this period of five years, it is provided that certain periods shall be for all purposes excluded. These periods are as follow:—

The time during which such person shall be a prisoner in a prison;

Shall be serving her Majesty as a soldier, marine, or sailor; or reside as an in-pensioner in Greenwich or Chelsea Hospitals;

Or shall be confined in a lunatic asylum, or

house duly licensed, or hospital registered for the reception of lunatics;

Or as a patient in an hospital;

Or during which any such person shall receive relief from any parish;

Or shall be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a *bond fide* charitable gift.

There is a proviso to prevent the application of the act to the removal of lunatics; and another to prevent the separation, in cases of removal, of husband and parent from a wife and children.

In reference to this clause, it is incumbent on the guardians to observe, that the administration of relief to paupers, whether resident or non-resident, can have no important effect upon their removal hereafter, inasmuch as the time during which relief is so given is excluded in the computation of time.

By the operation of this statute, many persons now receiving non-resident relief, or who might hereafter receive non-resident relief, will become irremovable in the place in which they reside. Non-resident relief is given because the pauper, on becoming chargeable to the place where he resides, might be removed to the place of his settlement.

In every case, therefore, in which a pauper becomes irremovable under this statute, no reason for continuing or for granting such non-resident relief will exist. The obligation to relieve rests upon the place where the pauper lives; and, as he cannot be removed from that place, the ground in respect of which non-resident relief was originally given, or might have been granted, will wholly fail. On the other hand, paupers who have not resided in a place long enough to become irremovable will remain liable to removal as before, and it will be necessary that the guardians should preserve the evidence of all payments made on account of any other parish or union; such evidence may be required hereafter to prevent the time during which relief was received from being reckoned in the time necessary to make the person irremovable.

The second clause prevents the removal of every widow resident with her husband at the time of his death for 12 calendar months after his decease, provided she continues so long a widow. In this case, upon the same grounds as those above stated, the charge of the maintenance of the widow will be exclusively imposed for a year upon the place where she resided at the time of the husband's death. Consequently, so long as she is in the same place, the place of her settlement, if different from the place of her residence, will, during that period, be relieved from the charge. The provision, therefore, has an important bearing upon the relief of non-resident poor.

The third clause prevents the removal of children, step-children, and illegitimate children from the parish in which they are residing with their parents or reputed fathers, in every case where the parent or reputed father cannot

\* See p. 505, ante.

be removed. This clause will, probably, not much affect the guardians in regard to the execution of their duties.

By the fourth clause the power of removing paupers, in cases where relief is made necessary by sickness or accident, is taken away, unless the justices granting the warrant state in such warrant that they are satisfied that the sickness or accident will produce permanent disability.

The object of this clause is to prevent removals in cases of temporary sickness or accident. It will materially interfere, therefore, with the granting of suspended orders of removal, and will consequently remove the inducement for the allowance of non-resident relief in many such cases as those which have heretofore occurred. The paupers will have to be maintained by the parish where they are sick.

## LEGAL OBITUARY.

Sept. 25.—James Cheveley, Esq., aged 42, solicitor, of 14, Frederick Street, Gray's Inn Road.

Oct. 5.—At Ostend, James Duthie, late of the Adelphi, Solicitor.

Oct. 7.—Aged 60, John Pimlott, for many years Deputy Receiver-General and Comptroller of the Seals of the Court of Queen's Bench and Common Pleas.

Oct. 8.—Henry Farrar, of Princes Risborough, formerly of Lincoln's Inn, Barrister-at-Law, called to the Bar 8th Feb. 1821.

Oct. 10.—Francis Whitmarsh, jun., of Gray's Inn, Barrister-at-Law, eldest son of Francis Whitmarsh, Esq., Q. C. Mr. Whitmarsh, jun., was called to the Bar on the 9th May, 1832, by the Hon. Society of Gray's Inn.

Oct. 11.—William Bond, Esq., one of the Magistrates of the Westminster Police Court, and Recorder of Pool and Wareham.

Oct. 14.—Francis Valentine Lee, aged 42, Barrister-at-Law, of the Oxford Circuit, called to the Bar 6th Feb. 1829, by the Hon. Society of Lincoln's Inn.

Oct. 20.—Charles Markham, solicitor, Clerk of the Peace of the County of Northampton.

Oct. 23.—John Bellamy, Clerk of Assize on the Oxford Circuit, aged 81.

## LOCAL AND PERSONAL ACTS,

9 & 10 VICTORIA.

DECLARED PUBLIC, AND TO BE JUDICIALLY NOTICED.

(Concluded from p. 606.)

315. An Act for making Railways from Birmingham to Wolverhampton and Dudley, to be called "The Birmingham, Wolverhampton, and Dudley Railway."

316. An Act for making a Railway from Walsall in the County of Stafford to the Mid-

land Railways at Wichnor Forge in Tatenhill, to be called "The Trent Valley, Midlands, and Grand Junction Railway."

317. An Act for making a Railway from the Line of the Perth and Inverness Railway to Aberfeldy, to be called "The Strathay and Breadalbane Railway."

318. An Act to enable the Londonderry and Enniskillen Railway Company to alter and extend the Line of such Railway, to make a Branch therefrom to the Town of Omagh, and to amend the Act relating thereto.

319. An Act for making a Railway from the proposed Sheffield and Lincolnshire Junction Railway to the City of Lincoln.

320. An Act to enable the Whitehaven and Furness Junction Railway Company to make a Railway in deviation from their Line of Railway, and to construct an Extension thereof to a Point of Junction with the Whitehaven Junction Railway.

321. An Act for making a Railway from Armagh to Portrush, with Branches to Randalstown and Ballymoney.

322. An Act for making a Railway from the Chester and Crewe Branch of the Grand Junction Railway at Calveley to Wolverhampton; and for other Purposes connected therewith.

323. An Act for making a Railway from Shrewsbury to Stafford, with a Branch to Stone; and for other Purposes.

324. An Act for making a Railway from Newton in the County of Montgomery to Crewe in the County of Chester, with Branches; and for other Purposes connected therewith.

325. An Act for making a Railway from Shrewsbury to Hereford, to be called "The Shrewsbury and Hereford Railway."

326. An Act to consolidate the Bristol and Gloucester and Birmingham and Gloucester Railway Companies with the Midland Railway Company.

327. An Act to alter and amend the North Wales Railway Act, 1845.

328. An Act for making a Railway from Birmingham to Wolverhampton, and to the Grand Junction Railway in the Parish of Bushbury, with a Branch to Dudley.

329. An Act to effectuate the Sale of the Glasgow, Garnkirk, and Coatbridge Railway Company of the said Railway to the Caledonian Railway Company; and for other Purposes therewith connected.

330. An Act for authorizing the Sale of the Pontop and South Shields Railway to the Newcastle and Darlington Junction Railway Company.

331. An Act to empower the London and Birmingham Railway Company to make a Branch Railway, from the London and Birmingham Railway near Coventry to the Trent Valley Railway in the Parish of Nuneaton.

332. An Act for making a Railway from the Edinburgh and Glasgow Railway to Bathgate, with Branches, to be called "The Edinburgh and Bathgate Railway."

333. An Act to enable the Surrey Iron Railway Company to Sell the Lands, Houses, and

other Property of the Company, together with the navigable Communication from the Dock of the Company to the River Thames at Wandsworth in the County of Surrey; and to dissolve the said Company.

324. An Act to enable the Glasgow, Garnkirk, and Goatbridge Railway Company to extend the Terminus of their Railway in Glasgow.

335. An Act for making a Railway and other Works from Plymouth to Falmouth and other Places in the County of Cornwall, to be called "The Cornwall Railway."

336. An Act for making a Railway from the Parish of Kenwyn in the County of Cornwall to Penzance in the same County with Branches, to be called "The West Cornwall Railway."

337. An Act for making a Railway from Birmingham to join the Lines of the proposed Oxford and Rugby and Oxford, Worcester, and Wolverhampton Railways, and to be called "The Birmingham and Oxford Junction Railway."

338. An Act for making a Railway into Birmingham in extension of the proposed Birmingham and Oxford Junction Railway.

339. An Act to authorize the Purchase of the Gravesend and Rochester Railway and Canal by the South-eastern Railway Company.

340. An Act for making a Railway from the Birmingham and Gloucester Railway at King's Norton in the County of Worcester to Hales Owen in the same County.

341. An Act for making a Railway from the South Wales Railway at or near to the Town of Neath to Merthyr Tydfil, with Branches, to be called "The Vale of Neath Railway."

342. An Act for making a Railway from the Borough of Cuckermouth to the Town of Keswick; all in the County of Cumberland, to be called "The Cuckermouth and Workington Extension Railway."

343. An Act for making a Railway from Lough Allen to Lough Gill, both in the County of Leitrim, to be called "The Sligo and Shanamon Railway."

344. An Act for constructing a Pier at Portbury in the County of Somerset, and for making a Railway from the same to the City of Bristol, with a Branch Railway connected therewith.

345. An Act to amend the Cambridge Improvement Acts, and to exempt the Eastern Counties Railway Company from certain Tolls thereby imposed.

346. An Act to repeal, alter, and amend the several Acts relating to Billingsgate Market in the City of London.

347. An Act for further and better supplying with Water the Barony or Regality of Gorbals and Places adjacent.

348. An Act for making certain new Streets or Thoroughfares, and widening and improving certain other Streets or Thoroughfares, within the Town and Borough of Sheffield in the County of York.

349. An Act for paving, lighting, watching, cleansing, regulating, and otherwise improving the Town of Tunbridge Wells in the Counties of Kent and Sussex.

250. An Act to repeal an Act of the Fifty-second Year of the Reign of King George the Third, for lighting and watching the Road leading from Newington Butts to the Nag's Head on the Wandsworth Road, and other Places communicating therewith, in Lambeth, Clapham, and Battersea in Surrey; and for making other provisions for lighting, and improving the said Road, and other adjacent or near thereto.

351. An Act to amend an Act passed in the Fifth Year of the Reign of His Majesty King George the Fourth, for granting certain Powers and authorities to the Australian Agricultural Company.

352. An Act for making a Railway from the intended Great Northern Railway in the Parish of Ufford in the County of Northampton, to unite with the Loop Line of the same Railway in the Parish of Crowland in Lincolnshire.

353. An Act for making a Railway from Llangynydd to Margam, by a Company to be called "The Llynvi Valley Railway Company."

354. An Act for making certain Lines of Railway in the West Riding of the County of York, to be called "The Sheffield, Rotherham, Barnsley, Wakefield, Huddersfield, and Goole Railway."

355. An Act for amending the Acts relating to the Taw Vale Railway and Dock, and for making an extension therefrom to the Exeter and Crediton Railway in the County of Devon.

356. An Act for making a Railway from Wisbech to Saint Ives, and to Fenny Drayton, to be called "The Wisbech, Saint Ives, and Cambridge Junction Railway."

357. An Act for making a Railway from the Northern and Eastern Counties Railway at Edmonton to the Town of Enfield in the County of Middlesex.

358. An Act for making a Railway from the Midland Railway at Staveley to the Town of Worksop, and for consolidating into one undertaking the said proposed Railway and the Canal Navigation from Chesterfield to the River of Trent.

359. An Act for making a Railway from the London and Birmingham Railway to or near to Navigation Street within the Borough of Birmingham.

360. An Act for making a Railway from Kilkenny to join the Great Southern and Western Railway at or near Cuddagh, to be called "The Kilkenny and Great Southern and Western Railway."

361. An Act for the maintenance of the Cemeteries at Golden Bridge and Prospect in the County of Dublin, and to create a perpetual Succession in the governing Body or Committee for managing the same.

362. An Act for making a Canal from the Harbour of East Farbert to West Lock Tarbert, and other Works in connexion therewith.

363. An Act for making a Ship-Canal from Sligo Harbour to Lough Gill, both in the County of Sligo, to be called "The Sligo Ship Canal."

364. An Act for enlarging, improving, and maintaining the Harbour, Quays, and Wharfs of Campbelltown; for supplying with Water, paving, cleansing, lighting, and watching the said Burgh and Suburbs thereof; and for the better and more effectual assessing, levying, and collecting the Laffer and other Dues and Customs of the said Burgh.

365. An Act for further regulating the Repair and Maintenance of the Roads, Streets, and Bridges within the Middle District of the County of Edinburgh, and the Assessments payable in respect thereof; and for other purposes relating thereto.

366. An Act to enable the Special Commissioners of the Town of Yeovil to sell certain estates in the Parish of Yeovil in the County of Somerset.

367. An Act to enable the Eastern Counties Railway Company to make two Branch Railways from the Line of the Eastern Counties and Thames Junction Railway, one thereof terminating at the Pepper Warehouses belonging to the East India Dock Company, and the other terminating by a Junction with the Eastern Counties Railway.

368. An Act for making a Railway from the London and Birmingham Railway in the Parish of Rugby in the County of Warwick to Leamington in the County of Warwick.

369. An Act to authorize an improvement of the Line of the West London Railway, and the Extension thereof to the River Thames.

370. An Act to enable the London and South-western Railway Company to make a Railway by Whitechurch and Andover to Salisbury.

371. An Act for making certain Branch Railways to be connected with the Newport and Pontypool Railway, and for incorporating a new Company, for carrying on the Monmouthshire Canal Navigation.

372. An Act for making a Railway from the Glasgow, Paisley, Kilmarnock, and Ayr Railway near Cumnock to the Caledonian Railway near the crossing of the River Sark, to be called "The Glasgow, Dumfries, and Carlisle Railway," with Branches.

373. An Act for authorizing the Sale of the Andover Canal and other Property of the Company of Proprietors of the Andover Canal Navigation.

374. An Act for embanking and reclaiming from the Sea certain Lands now under Water or subject to be overflowed by the Tide in the Estuary or Back Strand of Tramore in the County of Waterford.

375. An Act to incorporate the British Guarantee Association.

376. An Act for uniting the Rectory of North Lynn with the Perpetual Curacy of Saint Margaret with Saint Nicholas in the Borough of King's Lynn, all in the County of Norfolk.

377. An Act for making a Railway from Airdrie to Bathgate, with a Branch to Whitburn and Blackburn, to be called "The Airdrie and Bathgate Junction Railway."

378. An Act to incorporate the Company of Proprietors of the Manchester, Bolton, and Bury Canal Navigation and Railway with the Manchester and Leeds Railway Company.

379. An Act to amalgamate the Fallow and Gowan and Clydesdale Junction Railways with the Caledonian Railway.

380. An Act for enabling the Huddersfield and Manchester Railway and Canal Company to make a Branch Railway from their Main Line of Railway to Oldham.

381. An Act for making a Railway from the Liverpool and Bury Railway to the North Union and Blackburn and Preston Railways, with Branches therefrom, to be called "The Liverpool, Ormskirk, and Preston Railway."

382. An Act to grant certain Powers to the New Zealand Company.

383. An Act for constructing Docks at Millbay (Plymouth), to be called "The Plymouth Great Western Docks."

384. An Act to enable the Company of Proprietors of the Forth and Clyde Navigation to extend and enlarge the Basin at Bowling Bay, and to make and maintain certain other Works in connexion therewith; and to alter and amend the Acts relating to the said Navigation.

385. An Act for sewerage, draining, and lighting of the Hamlet of Brighouse in the Township of Hipperholme-cum-Brighouse in the Parish of Halifax in the West Riding of the County of York.

386. An Act for reclaiming from the Sea, embanking, and improving, the Salthouse Sands in the Manor of Plain Furness in the County Palatine of Lancaster.

387. An Act for improving and altering a Portion of the Harbour of Wexford in the County of Wexford in Ireland, and the Entrance thereof; for improving the Navigation of the River Slaney, and also the Bridge over the same River at or near to the Town of Wexford; and for embanking and reclaiming divers Waste Lands, Mud Banks, or Slobs, in and adjacent to the said Harbour and River; and for other Purposes.

388. An Act for inclosing and reclaiming from the Sea certain Tracts of Land forming Part of the Great Estuary called "The Wash," between the Counties of Norfolk and Lincoln.

389. An Act for enabling the Warden and College of the Souls of All Faithful People deceased of Oxford to grant Building and Improving Leases of their Estates in the County of Middlesex.

390. An Act for making certain Lines of Railway in the West Riding of the County of York, to be called "The West Riding Union Railways."

391. An Act to enable the London and South-western Railway Company to extend their Railway to the Thames near London Bridge in the County of Surrey.

392. An Act for making a Railway from the Glasgow, Paisley, Kilmarnock, and Ayr Railway near the Manse of Newton to the Town of Girvan, with a Branch to the Town of Maybole, to be called "The Glasgow and Belfast Union Railway."

393. An Act to empower the Taff Vale Railway Company to construct certain Branch Railways and Extensions, and to make Arrangements for the Use of certain Wharfs adjoining the Bute Ship Canal.

394. An Act to authorize the Newcastle-upon-Tyne and Carlisle Railway Company to extend their Railway in Newcastle-upon-Tyne, to make a Branch Railway, and for other Purposes connected with their Undertaking.

395. An Act to enable the Caledonian Railway Company to deviate certain Portions of the Clydesdale Junction Railway.

396. An Act for making a Railway from the East and West India Docks to join the London and Birmingham Railway at the Camden Town Station, to be called "The East and West India Docks and Birmingham Junction Railway."

397. An Act for making a Railway, from Cork to Waterford, with Branches therefrom.

398. An Act to incorporate a Company by the Name of "The Metropolitan Sewage Manure Company."

399. An Act for the Regulation of the Legal Quays within the Port of London.

400. An Act to extend the Powers of the Commissioners of Wide Streets, Dublin, to widen and improve certain Streets and Passages in the City and County of Dublin.

401. An Act to authorize the construction of a Railway from Malin-y-Manach to Rhydydd in the County of Glamorgan, to be called "Cameron's Coalbrook Steam Coal and Swansea and Loughor Railway."

402. An Act for authorizing certain Alterations in and Extensions of the Line of the South Devon Railway, and the formation of Branches therefrom to Torquay and other Places.

## NOTES OF THE WEEK.

### THE NEW JUDGE.

ON the 27th instant, Mr. Vaughan Williams took leave of the Honourable Society of Lincoln's Inn, by which he was called to the bar in the year 1823. There was a large assemblage of benchers, barristers, and students, in the New Hall; and the expectant judge was introduced with great solemnity, and was addressed, in the absence of the treasurer, by Lord Campbell, who highly complimented the learned gentleman on his professional attainments, and presented him, according to ancient usage, with the retaining fee of ten guineas to plead for the society during his brief practice as a serjeant-at-law. The bell was then tolled, and the learned counsel was warmly congratulated on his elevation.

## RECENT DECISIONS IN THE SUPERIOR COURTS.

REPORTED BY BARRISTERS OF THE SEVERAL COURTS.

### Queen's Bench.

(Before the Four Judges.)

Sittings in Banc after Easter Term, 1846.

### Prickett v. Gratrex.

TRESPASS.—NOTICE OF ACTION.

*A notice of action under the statute 24 Geo. 2, c. 44, was for having "caused" the plaintiff "to be apprehended and committed to a certain gaol in M., and to be there imprisoned and kept," &c., and then gave notice that the plaintiff would cause "a writ of summons to be sued out for the said imprisonment."*

*Held, that the notice was sufficient in respect of the intended writ and cause of action.*

THIS was an action of trespass and false imprisonment brought against a magistrate for having issued a warrant for the committal of the plaintiff. Plea not guilty by statute. The case was tried before Mr. Baron Platt, at the Monmouthshire Lent Assizes, 1845. The plaintiff served a notice on the defendant, which was as follows:—

"To Thomas Gratrex, Esq., &c. You having on or about the 14th day of May last, as one of her Majesty's justices of the peace in and for the said borough of Monmouth, caused me to be apprehended and unlawfully committed to a certain common gaol or prison in the borough of Monmouth aforesaid, and to be there imprisoned and kept and detained in prison there, without any reasonable or probable cause whatsoever, for a long space of time, to wit, from the said 14th day of March last, to the 9th day of August then next following, I do, therefore, according to the form of the statute in such case made and provided, hereby give you notice, that I shall, at or soon after the expiration of one calendar month from the time of your being served with this notice, cause a writ of summons to be sued out of her Majesty's Court of Queen's Bench at Westminster against you, at my suit, for the said imprisonment, and shall proceed against you thereupon according to law. Dated this 4th day of December, 1843. Signed, James Prickett."

At the trial, amongst other objections, it was contended on behalf of the defendant, that the notice was insufficient, because the cause of action was not properly described, nor was the place mentioned where the imprisonment took place. The learned judge was of opinion that the notice was sufficient, but told the jury that the question was, whether the defendant had acted maliciously, for if they thought that the defendant had acted in good faith and was regularly called upon to act, their verdict should be for the defendant. The jury found a verdict for the defendant.

A rule nisi having been obtained for misdirection.

Mr. Whateley and Mr. Greaves showed cause, and contended that the notice of action was bad, because the form of the intended action was not mentioned, nor does the notice state in what place the defendant did the act which gave the plaintiff a cause of action. The notice merely states generally, that the defendant caused the plaintiff to be committed and imprisoned. *Breeze v. Jerdein*,<sup>a</sup> *Martins v. Ufcher*,<sup>b</sup> *Rez v. The Justices of Devon*.<sup>c</sup>

Mr. Godson and Mr. Carrington, in support of the rule, contended, that the notice was sufficiently within the meaning of the statute. It alleges that the action will be brought for "the said imprisonment," which gives the necessary information to the defendant, that the plaintiff intends to bring an action of false imprisonment, and the place of imprisonment is clearly defined by the word "there." *Jacklin v. Fytche*.<sup>d</sup>

Lord Denman, C. J. I am of opinion that this notice is good. I think the form of action need not be specified in the notice; it points out where the imprisonment took place and the nature of the grievance, and that naturally imports that the action would be trespass and false imprisonment. I cannot agree with the learned judge in his direction to the jury that *bond fides* would alone justify magistrates. The course of practice for a long time shows that principle has been abandoned, if not, in nearly all the actions that have been brought, that alone would have been an answer. *Bond fides* is only the test whether notice of action is necessary.

Mr. Justice Patteson. I was not here yesterday when the case was argued for the defendant, but from what I have heard to day I entirely agree with what has been said by my Lord.

Mr. Justice Williams. I am of opinion that the notice is sufficient. The case of *Sabin v. De Burgh*<sup>e</sup> appears to me decisive of the point. The statute does not require the form of action to be mentioned in the notice, it only requires notice of the intended writ or process.

Rule absolute.

#### Exchequer.

*Kynaston v. Davis.* June 27, 1846.

FIAT IN BANKRUPTCY.—SUBSTITUTED CREDITOR.—PETITIONING CREDITOR'S DEBT.

The expression "opening the fiat," in the 5 & 6 Vict. c. 122, s. 4, does not mean the mere reading of the document in court, but the adjudication by the commissioners after receiving the necessary proof; therefore, under the statute a new creditor may prosecute the fiat after the petitioning creditor has failed in proof of the debt.

Such new creditor is not bound to prove the petitioning creditor's debt, but the court may adjudge the party bankrupt on proof by the new creditor of his debt, the trading and act of bankruptcy, although the petitioning creditor's debt is insufficient, and no order is made by the Lord Chancellor for substituting another debt under the 6 Geo. 4. c. 16, s. 18.

THIS was an action by the assignees of one Davis, a bankrupt. The defendant pleaded, that the plaintiffs were not assignees. At the trial it appeared, that in June, 1844, a fiat in bankruptcy had issued against Davis, but the petitioning creditor being unable to prove his debt before the commissioner, other creditors applied for liberty to prosecute the fiat under the 5 & 6 Vict. c. 122, s. 4. That application being granted, Davis was declared bankrupt, upon proof of the debt, trading, and act of bankruptcy, by the last-mentioned creditor. A verdict having been found for the plaintiffs, a rule nisi was granted, pursuant to leave reserved to move to enter a nonsuit, if the court should be of opinion that the plaintiff's title as assignees was not proved.

Crowder and Taprell showed cause, and argued, that the plaintiffs had a title as assignees; if appearing that the fiat was not opened by the petitioning creditor, and that the new creditors gave the requisite proof within 44 days, according to the provisions of the 4th sect. of the 5 & 6 Vict. c. 122.

Cockburn, Bull, and Barstow, in support of the rule, argued, first, that the above section did not apply, inasmuch as the fiat was opened by the petitioning creditor; secondly, that the fiat was void, there being no proof of the petitioning creditor's debt or the substitution by the Lord Chancellor of some other debt in its place under the 6 Geo. 4, c. 16, s. 18. The following statutes and authorities were referred to: 6 Geo. 4, c. 16, ss. 15, 18; 5 & 6 Vict. c. 122, ss. 4, 23, 25, and 93. *Ex parte Hayes*, 1 G. & Jam. 255; *Ex parte Henderson*, 2 Rose, 190; *Ex parte Freeman*, 1 Rose, 384; *Ex parte Hall*, Mont. & M. 39; *Ex parte Robinson*, ib. 44; *Ex parte Chappell*, 2 G. & Jam. 131; *Hill v. Neale*, 2 N. R. 196; *Muskett v. Drummond*, 10 B. & C. 153; *Fletcher v. Manning*, 12 M. & W. 571; *Lord Loughborough's Orders*, 26th June and 5th Nov. 1793.

Cur. adv. vult.

The judgment of the court was delivered by Parke, B.<sup>a</sup> The first point depends upon the meaning which we are to give the words "opening the fiat." On the circuits the commissions are said to be opened as soon as they are publicly read in court, and it may be argued, that by analogy a fiat is opened when it is read in the court to which it is referred. But there are strong grounds for holding that in the case of a fiat something more is meant than the mere ceremony of reading a document. A bankruptcy has been described as a

<sup>a</sup> 4 Q. B. R. 585. <sup>b</sup> 3 Q. B. R. 662.

<sup>c</sup> 1 M. & S. 412. <sup>d</sup> 14 Mee. & Wel. 381.

<sup>e</sup> 2 Camp. 197.

<sup>a</sup> The judgment is necessarily abridged.



statutory execution for the benefit of all the bankrupt's creditors. But up to the point of adjudication the whole matter was, until the 5 & 6 Vict. c. 122, in a great measure under the sole control of the petitioning creditor, and in the event of his letting the fiat drop, no other creditor could take advantage of it. By the adjudication, however, the nature of the whole proceeding is changed. That which was originally in the nature of a private process becomes the public right of all the creditors. Then and not till then does the character of a statutory execution for creditors generally attach, and we are all of opinion that it is in this sense the expression of "opening the fiat" must be understood. On the remaining part of the case we have not felt so free from doubt. By the 6 Geo. 4, c. 16, s. 24, it is enacted, that on proof of the petitioning creditor's debt, the trading and act of bankruptcy, the commissioners shall adjudge the party to be bankrupt. The 4th section of the 5 & 6 Vict. c. 122, enables the commissioner, when the fiat has not been opened by the petitioning creditor, to proceed, on the application of any other creditor, to the requisite amount, and to adjudicate thereon, on proof of the debt of such new creditor, and "of the other requisites to support the fiat." The question, whether it was or was not necessary to prove the original petitioning creditor's debt depends upon the meaning of the term "other requisites to support the fiat." We are of opinion that when the new creditor has proved his own debt to the requisite amount, the only other requisites are the trading and the act of bankruptcy. To hold otherwise would be to deprive the enactment of all effect whatever. Besides the word "other" would be altogether inappropriate if the new creditor is bound to prove all which the original creditor must have proved. If that had been the meaning of the legislature the language should have been, "on proof of the debt of the new creditor and of the requisites, or all the requisites to support the fiat," not "of the other requisites." The 24th section of the 6 Geo. 4, c. 16, gives no means of compelling the attendance of any witness to prove the petitioning creditor's debt, and it is scarcely possible to conceive a case in which that debt can be proved by the new creditor, who has not the means of examining for the purpose either the debtor or creditor. Even if he should by chance be able to show that the debt was once contracted, it would obviously be impossible for him to negative all the circumstances by which it may have been afterwards discharged, such as a release, payment, or the like. It remains to be considered whether, on such adjudication, assignees may be chosen and the bankrupt's property administered without more, and the fiat be valid without regard to the original petitioning creditor's debt, or whether the adjudication has only the effect of enabling the commissioners to execute these powers *formally*, leaving the validity of the fiat to depend upon the sufficiency of the petitioning creditor's debt, which was, by

the 6 Geo. 4, c. 16, s. 13, a condition precedent to its issuing, so that if the debt should be sufficient, the fiat would be valid: if insufficient, the fiat would be advanced to that stage at which the Chancellor might render it valid, by the exercise of the power of substitution of a new petitioning creditor's debt given to him, *after adjudication*, by the 6 Geo. 4, c. 16, s. 28. After much consideration, we all agree in thinking that the proper construction of the clause is the former, and that the fiat is valid if the debt of the applying, or as he may be properly termed, "prosecuting creditor," be sufficient. We therefore think that the plaintiffs have made out their title to maintain the action, and the rule must be discharged.

Rule discharged.

#### Court of Exchequer.

Re Rothschild. July 20, 1846.

#### SALE OF EFFECTS. — BIDDINGS. — ASSIGNEE.

*An assignee will not be allowed to bid at the sale of a bankrupt's effects, although the other assignees consent, and the articles to be sold have a peculiar value, known only to the assignee, and but few others in the bankrupt's trade.*

*Semble, that such assignee being desirous of bidding, can only do so after his retiring from the assigneeship.*

THIS was the petition of an assignee for leave to bid at the sale of diamonds and precious stones, in which he and the bankrupt happened to be dealers, the trade being in the hands of very few persons.

Mr. Glasse appeared in support of the petition, which was unopposed, the assignee consenting, and believing that the proceeds of the sale would be enhanced by such proposed bidding.

Sir J. L. Knight Bruce, C. J. I cannot grant the petition, unless he retires from the assigneeship, with the consent of the other assignees. He may have been assisting in arranging the catalogue and the day of sale. He may know more of the value of the articles, but he should have considered that before he became an assignee. I do not like to do it. But you may mention it again if you think proper.

#### COMMON LAW CAUSE LISTS.

##### Queen's Bench.

##### NEW TRIALS.

Remaining undetermined at the end of the Sittings after Trinity Term, 1846.

##### Easter Term, 1845.

*Chester*.—Doe several dems. of Her Majesty and another v. Archbishop of York and others.  
*Fork*.—Phillips v. Broadley.

*Tried during Easter Term, 1845.*

*Middlesex*.—Hopkins v. Richardson.

*Trinity Term, 1845.*

*London.*—*Sherrington v. Collins.*

*Michaelmas Term, 1845.*

*Middlesex.*—*The Queen v. Thornton; The Queen v. Gompertz.*

*London.*—*Murrieta v. Oldfield; Nicoll v. Gilham.*

*Subwy.*—*Doe d. Bennington and others v. Barrell and others.*

*Northampton.*—*Button, a pauper, v. Macquire.*

*Cardiff.*—*Taylor v. Clay and another; Doe d. Lord v. Kingsbury.*

*Cardmarthen.*—*Protheroe v. Jones; Chambers, Esq. v. Thomas and another; Same v. Same; Same v. Same.*

*Cardigan.*—*Doe d. Jenkins and another v. Davis and another.*

*Brecon.*—*Maybery v. Mansfield.*

*York.*—*Smith v. Smith; Marshall v. Powell and another; Spence, a pauper, v. Meynell, Esq., and another; Doe d. Norton v. Norton; Bainbridge v. Bourne, the younger; Wilkinson v. J. Haygarth; Same v. Same; Bainbridge v. Lox and others.*

*Durham.*—*Smith v. Hopper and others; Reed v. Same; Hinde v. Raine and another.*

*Devon.*—*Mayor, &c. of Exeter v. Harvey and another; Damerell v. Protheroe and others; Schanks v. Sweetland.*

*Cornwall.*—*Marshall, Esq. v. Hicks.*

*Somerset.*—*Doe d. Earl of Egremont and others v. Williams and another.*

*Bristol.*—*Addison v. Gibson.*

*Hilary Term, 1846.*

*Middlesex.*—*Hunter v. Caldwell; Doe d. Tabbutt and others v. Brent and others.*

*London.*—*Whyte and another v. Barnley; Bond and another v. Nurse and another; Turner v. Ambler; The Queen v. F. Kensington.*

*Tried during Hilary Term 1846.*

*Middlesex.*—*Lovelock v. Franklyn.*

*Easter Term, 1846.*

*Middlesex.*—*Pemberton v. Vaughan; Thompson v. Pettit and another; Vincent v. Dore, executrix, &c.*

*London.*—*Curtis v. Pugh; De Freis v. Littlewood and another; Follett and others v. M'Andrew; Tucker v. Clarkson; The Queen v. Benjamin Parker.*

*Kent.*—*Doe d. Jacobs v. Phillips.*

*Sussex.*—*Standen v. Christmas; Kine v. Evershed.*

*Surrey.*—*Pemberton, D.D. v. Colls, D.D.; Samuel v. Green.*

*Durham.*—*Hills and another v. Mesnard and others.*

*York.*—*Mountain v. Groves and another; Worth and another v. Gresham and another.*

*Liverpool.*—*Doe d. Haywood v. Tinsley.*

*Chester.*—*Johnson v. Oldfield; Davis v. Falk; Doe d. Groves v. Groves.*

*Glamorgan.*—*Doe d. Richards and another v. Evans; Doe d. Bennett v. Harvey and another.*

*Cardmarthen.*—*Thomas, Esq. v. Frederick, Esq.; Same v. Same.*

*Lincoln.*—*Chapman v. Rawson.*

*Stafford.*—*Whitmore and others, assignees, &c. v. Leak.*

*Hereford.*—*Evans v. Horniatt.*

*Gloucester.*—*Garbett and others v. Adams and others; Doe d. Dyke v. Dyke.*

*Somerset.*—*Parnell v. Smith and others.*

*Devon.*—*Woolmer and others v. Toby the younger.*

*Middlesex.*—*Beales, Moats and others.*

*London.*—*Nicholls v. Atherstone.*

*SPECIAL CASES AND DEMURRERS.*

*Michaelmas Term, 1846.*

*Dale v. Pollard and others, special case, stands over till judgment given in Gosling v. Voley.*

*Stephenson, executor, &c. v. Newman, assy. &c., dem.*

*Flanders v. Banbury, special case.*

*Sharpe v. Black, clk., dem.*

*Bryant and another v. Holmes, dem.*

*Herbert v. Booth and others, dem.*

*Newton v. Beadle, sued with others, dem.*

*Newton v. Rowe and Norman, sued with another, dem.*

*Cobb v. Allan and another, special case.*

*Hutt v. Morrell, dem.*

*Williams, assignee, &c. v. Chambers, dem.*

*Blagg v. Gibson and another, dem.*

*Andrews v. Baron Lyndhurst, dem.*

*Nicoll v. Orgill, dem.*

*Doe dem. Renon and another v. Ashley, special case.*

*Doe d. Hawsworth v. Hawsworth, special case.*

*Jacks v. Hill, dem.*

*Berkley v. Kemp, dem.*

*Same v. Mackey, dem.*

*Myers v. Pickford, and others, dem.*

*Gillgrass v. Kay, dem.*

*Bamford the younger, v. France, dem.*

*Tarbottom and another, v. Fleming, sued with others, dem.*

*Munden v. Duke of Brunswick, dem.*

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*Stansfield and another v. Upton, dem.*

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*Goddard v. Wray, dem.*

*Common Pleas.*

*Remanet Paper of Michaelmas Term, 1846.*

*Enlarged Rules.*

*To 1st day.*—*The Queen v. Hemsworth, in the cause of Hemsworth v. Bryan.*

*To 5th day.*—*Doe dem. Stringer v. Stringer.*

*To 6th day.*—*Hinton v. Acraman.*

*To 8th day.*—*Carey v. Smallwood.*

*New Trials of Trinity Term last.*

*Middlesex.*—*Robinson v. Brown and another executors; Same v. Same; Same v. Dixon.*

*CUR. AD VULT.*

*Patteson and others v. Holland and others. To stand over till the sci. fa. in Queen's Bench is determined.*

*Benson v. Chapman.*

*Gibbs and another v. Flight and another.*

*Roberts v. Grunseisen.*

*Rich v. Basterfield.*

*Woolly and another v. Smith.*

Doe (Harrison) v. Hampson.  
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*Demurrers, Michaelmas Term, 1846.*

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Barry and another v. Nesham and another.  
Doe (Phillips) v. Rollings.  
Tibaldi v. Wanless.  
Thompson and others, executors, v. Lack.  
Brown and others v. Mallett.  
Pawson and another v. Hurrell.  
Ireland v. Thomson.  
Whiting v. Des Anges and another.  
Saunders v. Page.  
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Saturday . . . . .	Nov. 7	} Special arguments.
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Wednesday . . . . . 25 End of Term,

## COMMON LAW SITTINGS.

### Common Pleas.

*In Term.*

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Friday . . . . . Nov. 6	Wednesday . . . . . Nov. 11
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MIDDLESEX.	LONDON.
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N. B. The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Friday the 27th Nov, in London, no causes will be tried, but the court will adjourn to a future day.

## DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

*From Sept. 22nd, to Oct. 16th, 1846, both inclusive, with dates when gazetted.*

Smith, Joel, and Samuel Wilkinson, jun., Welsh, Attorneys and Solicitors. Oct. 2.

Vincent, George, and John Sherwood, 9, King's Bench Walk, Temple, Attorneys and Solicitors. Sept. 25.

## PERPETUAL COMMISSIONERS.

*Appointed under the Fines and Recovery Act.*

*From Sept. 22nd, to Oct. 16th, 1846, both inclusive, with dates when gazetted.*

Geldard, Christopher John, of Settle, for the West Riding of York. Oct. 2.

Hoyland, Robert, of Brierly, near Barnsley, for the West Riding of York. Sept. 25.

Jones, William, of Newtown for Montgomery, Radnor and Salop. Oct. 6.

Lane, John, jun., of Stratford-upon-Avon, for Warwick. Oct. 13.

## LAW PROMOTIONS AND APPOINTMENTS.

William Frederick Pollock, Esq., of the Northern Circuit, who was called to the Bar by the Honourable Society of the Inner Temple on the 26th Jan. 1838, has been appointed one of the Masters of the Court of Exchequer.

The Queen has been pleased to appoint Henry Edward Sharp, Esq., to be Chief Justice for the Island of St. Vincent. Oct. 20.

Her Majesty has also been pleased to appoint John Sealy, Esq., to be her Majesty's Attorney-General for the Island of Barbadoes. Oct. 20.

## THE EDITOR'S LETTER BOX.

In the case of *Ex parte Reynolds*, p. 519, ante, we have to add the following to our note at p. 592. The amount of Fees having been paid before the choice of assignees, it was almost a motion of course to withdraw it, and it was unnecessary to refer to the particular section under which the payment was made. The case of *Re Teague*, in the last number of Mr. De Gex's Reports in Bankruptcy, may, perhaps, elucidate the point adverted to by our correspondent. The absence from town of the counsel has prevented us from giving this explanation at an earlier period.

M. A. inquires, "What would be the effect of the following limitations in a conveyance of freehold property, where the legal estate in fee was outstanding in a trustee at the time the conveyance was executed, but who was not a party to that conveyance which was founded on a valuable consideration. 'To hold unto said A. B., (who was the purchaser,) and C. D., their assigns, during the life of the said A. B., in trust for him and his assigns for his life, and after the decease of the said A. B., to the use of the heirs and assigns of the said A. B. for ever.'"

The letter of "Lex Jan." on the decision in *Steadman v. Hockley*, p. 592, ante, has been attended to.

# NAMES OF CASES REPORTED AND DIGESTED

AND CITED IN ARTICLES ON

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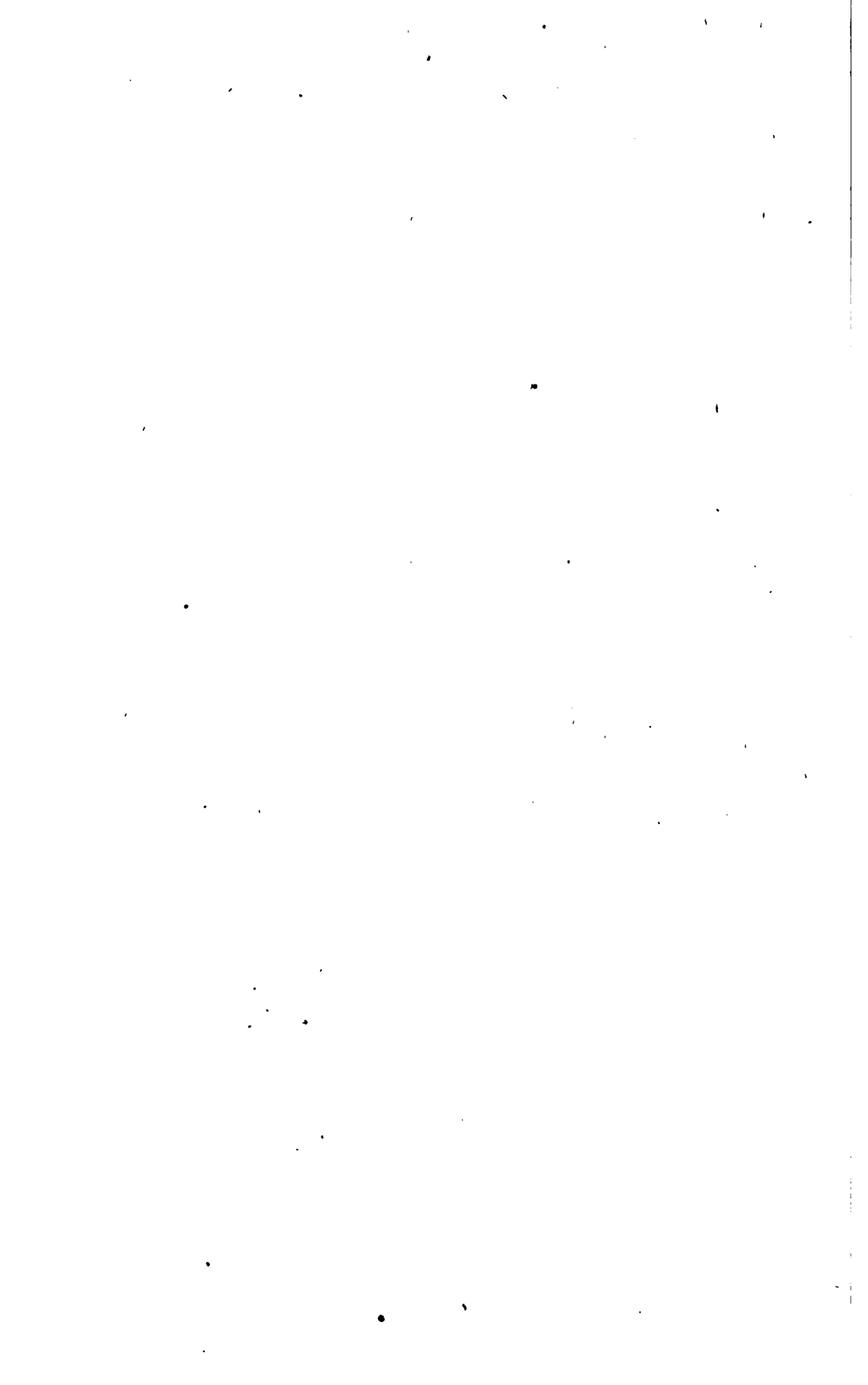
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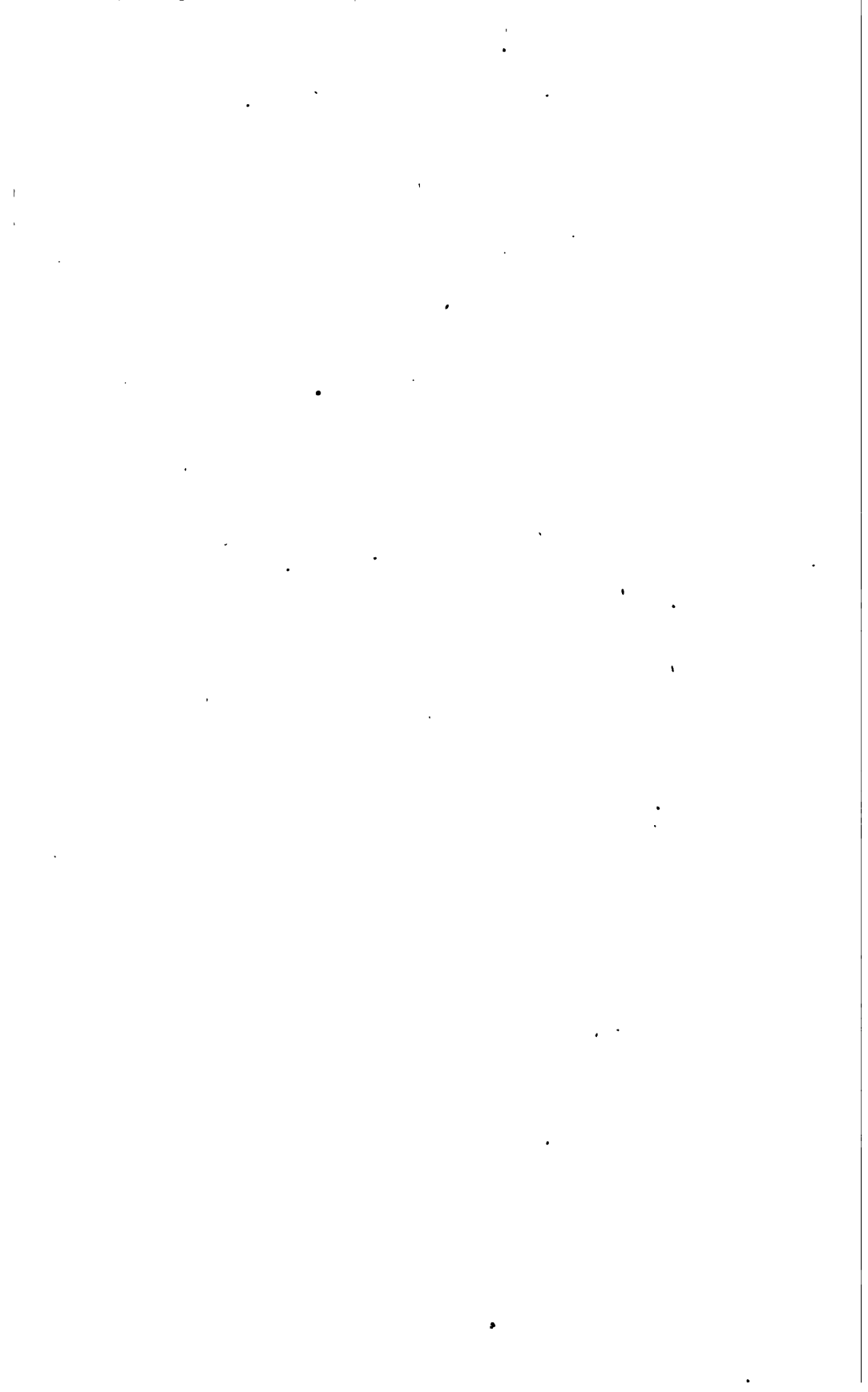
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